

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 MELISSA BASTIAN,

PLAINTIFF,

4 -against-

Case No.:
13 CIV 5972
(ALC) (GWG)

6 NEW YORK CITY DEPARTMENT OF EDUCATION,

7 DEFENDANT.

8 -----X

10 DATE: August 11, 2014

11 TIME: 11:30 A.M.

12
13 DEPOSITION of the Plaintiff, MELISSA BASTIAN, taken
14 by the Defendant, pursuant to a Notice and to the Federal
15 Rules of Civil Procedure, held at the offices of the New
16 York City Law Department, 100 Church Street, New York, New
17 York 10007, before Stacy Tepler and Anna Vortsman, Notaries
18 Public of the State of New York.

1 A P P E A R A N C E S:

2

3 LAW OFFICE OF STEVEN MORELLI
4 Attorneys for the Plaintiff
5 MELISSA BASTIAN
6 1461 Franklin Avenue
7 Garden City, New York 11530
8 BY: JOSH BELDNER, ESQ.

9 ZACHARY W. CARTER, ESQ
10 CORPORATION COUNSEL
11 NEW YORK CITY LAW DEPARTMENT
12 Attorneys for the Defendant
13 DEPARTMENT OF EDUCATION
14 100 Church Street
15 New York, New York 10007
16 BY: SEAN RENAGHAN, ESQ.
17 File #: 2013041435

18 ALSO PRESENT:

19 DONALD SULLIVAN, ESQ.
20 SHAWN MATTHEW CLARK, ESQ

21 * * *

M. BASTIAN

1 Q. Have you ever pled guilty to a crime?

2 A. Never.

3 Q. Have you ever been arrested?

4 A. No.

5 Q. Have you ever at any time been accused of
6 discriminating against another person?

7 A. No.

8 Q. Have you ever been at any time accused of
9 retaliation?

10 A. No.

11 Q. Other than this lawsuit, have you ever accused
12 anyone of discriminating against you?

13 A. No.

14 Q. Other than this lawsuit, have you ever accused
15 anyone of retaliating against you?

16 A. No.

17 Q. What is the highest level of education that
18 you've achieved?

19 A. I have a master's degree in school counseling,
20 and I have accumulated 12 credits beyond master's, still in
21 school counseling.

22 Q. Let's start with the most recent. The 12
23 credits, what institution, when, what time frame did you
24 take those?

25 A. They're scattered. I graduated in 2009, so I

M. BASTIAN

1 started taking a course here and there. I don't really
2 remember the dates, but it's between 2009 and the last
3 course being of this year, 2014. It was all taken at the
4 College of Saint Rose, it's like a pilot program that meets
5 on weekends.

6 Q. The master's in school counseling, what
7 institution was that from?

8 A. That is Alfred University, it's called the CITE
9 program, Center for Teachers Program -- its an acronym for
10 Center for Integrated Teacher Education. They are
11 multi-sited, but university that I was affiliated with was
12 Alfred University.

13 Q. Could you spell that?

14 A. CITE is an acronym. Center for Integrated
15 Teacher Education. That is a large program, and they're
16 multi-sited. They are affiliated with many universities,
17 Fordham, Saint Rose, but the university that I -- my
18 master's was under, was Alfred University.

19 Q. When did you get your master's?

20 A. 2009, May 2009.

21 Q. Then did you go to college before that?

22 A. I did.

23 Q. So do you have a college degree, what degree is
24 that?

25 A. I have an associate's -- Hunter College, it's in

M. BASTIAN

1 A. No, that was back in the '80s.

2 Q. So when was the last time you were with them?

3 A. The temp agencies?

4 Q. Yes.

5 A. In the '80s.

6 Q. When did you start with the DOE?

7 A. I started with the DOE 1980 -- I think it was
8 either '83 or '84, then I left, then I came back in 1995.

9 Q. Where were you '83, '84, what was your position
10 with the DOE?

11 A. I was school secretary.

12 Q. Where were you a school secretary?

13 A. At A. Philip Randolph.

14 Q. When you came back what was your title?

15 A. My title has always been school secretary. I
16 left there, then I -- I went -- I left A. Philip Randolph,
17 I did the temp, then went to another school in 1986. 1986
18 I went to another school.

19 Q. What was the name of that school?

20 A. It was a multi-sited alternative school called
21 the Outreach Centers.

22 Q. Where did you go after that?

23 A. I stayed there until 1995. 1995 I left there
24 then I returned to A. Philip Randolph at 1995, and from
25 1995 until the present I've worked at A. Philip Randolph.

M. BASTIAN

1 This is my second time there.

2 Q. What are your current duties at A. Philip
3 Randolph?

4 A. I am assigned to -- I am the pupil accountant
5 secretary/record secretary.

6 Q. What are the duties of that position?

7 A. Pupil accounting secretaries are responsible for
8 registration. We are responsible for making sure that the
9 information, student profile is up to date. If the child
10 is moved, changing that, changing guardianships. We are
11 responsible for class changes, for scheduling of classes.
12 We are responsible for, in the event that there is a
13 distinctive situation within the family and there is some
14 kind of order of protection or restraining order, we are
15 responsible for putting that onto the screen so that if the
16 other parent who has been, I guess accused of doing
17 something to the child, tries to enter the school, they
18 will not be able to because it will go through the entire
19 school. So people try to do different things with
20 different people, so it's a flag. A warning flag. What
21 else am I in charge of? Pupil accounting, I do all the
22 flags, graduation updates, promotions, it's a lot. I could
23 go on and on and on with this. Functions of multitude.

24 Q. Who is your supervisor?

25 A. David Fanning.

M. BASTIAN

1 Q. You said that your title at A. Philip Randolph
2 has been school secretary the entire time. Have your
3 duties changed while you were at A. Philip Randolph at all?

4 A. Within recently? Or what time frame?

5 Q. The last ten years.

6 A. It has.

7 Q. Can you please tell me about that.

8 A. Sure. Under guidance, the guidance department
9 has many components. Guidance is attendance. It is
10 college, college preparation, it is scheduling, it is
11 programming, of course it's guidance, it's records.
12 Anything that would affect the child outside of the
13 classroom, that is not instructional would fall under
14 guidance. I have been the secretary to college office.

15 Q. What was the time period for that?

16 A. I can't say with accuracy, I really --

17 MR. BELDNER: Don't guess.

18 A. I need to look at my résumé. I can't remember.

19 Q. Where did you go from guidance?

20 A. That is one of the positions, guidance, that was
21 actually in the guidance department. Is it confusing? The
22 guidance department has many units. Attendance,
23 programming, scheduling, college, records, people
24 accounting, all of that falls under guidance, and under
25 that, I've done everything outside the attendance pace --

M. BASTIAN

1 the attendance monitor. I've been in almost every
2 department in guidance.

3 Q. Do you remember roughly chronologically, how you
4 moved about within those roles?

5 A. Chronologically, when I entered A. Philip
6 Randolph in 1995, I was in guidance, I was assigned to the
7 guidance department. From the guidance department, I was
8 assigned to records. From records, I was assigned -- take
9 records out. I was assigned to the college office. I am
10 trying to keep it in order. From the college office -- but
11 while I was in the college office, I was also doing other
12 responsibilities. But that was the gist of it. That was
13 the main responsibility I had. From the college office, I
14 went to records and pupil accounting. I am still there.

15 Q. You are still there?

16 A. I am still there.

17 Q. So you moved from college to records to pupil
18 accounting?

19 A. Correct, with other responsibilities too, but
20 that is what happened in guidance.

21 Q. Just back up a little bit, is Outreach a DOE
22 facility?

23 A. Yes.

24 Q. That is still part of DOE while you were there?

25 A. Outreach centers are multi-sited. There is a

M. BASTIAN

1 site in each borough. They specialize in servicing young
2 people who -- they are nontraditional -- young people who
3 have left school and who are kind of overage, but under
4 credited, and know that there is no way in this world they
5 will be able to get a high school diploma by the time they
6 reached the age before, you know, having to leave high
7 school. So these programs combine academic curriculum so
8 that the student would be able to get what he or she needs
9 and graduate from high school. It's Department of
10 Education.

11 Q. So you've been continuously at the Department of
12 education since about 1983-1984; is that correct?

13 A. Not continuously, remember I left.

14 Q. I thought you said you left to go to Outreach?

15 A. No, when I left in 1984, I left the school, then
16 that is the temp jobs, that is when the temp jobs kicked
17 in. Then I returned in '86, that is when I went to the
18 Outreach program. The Outreach program, I stayed there
19 until 1995. Then when I left the Outreach program, I
20 returned to A. Philip Randolph High School.

21 Q. Why did you come back to the DOE?

22 A. I needed a job.

23 Q. Did you request to go specifically to A. Philip
24 Randolph?

25 A. I did, I -- the hiring situation at the

M. BASTIAN

1 Department Education, because it's a long time ago, was way
2 different than now. So you would contact the hiring hall
3 at 65 Court Street, and whatever was available in your
4 field, the hiring hall would send you out on interviews.
5 And I did that. I contacted them, but then I found out
6 there was a position at A. Philip Randolph. So I said wow,
7 I will go back. That is how it happened.

8 Q. Why did you leave the DOE to take the temp jobs,
9 why did you choose -- or did you choose?

10 A. Yeah, I did. I chose, because Ms. Tailor didn't
11 want me to leave. She is the founder of that school, by
12 the way. I was like 22, 23, so I wanted to branch out. I
13 had just graduated high school -- I just graduated college,
14 I was like 23 years old. I wanted to see different things
15 and move around. That is when I went into temp. When I
16 found out I didn't really want to be in temp any more, I
17 came back to the Department of Education, I like my summers
18 off.

19 Q. I want to get into your allegations here. You
20 are alleging in this lawsuit that the DOE and its employees
21 took employment actions against you that were
22 discriminatory; is that correct?

23 A. That is correct.

24 Q. You are also claiming that DOE and its employees
25 took actions or made statements that created a hostile work

M. BASTIAN

1 environment; is that correct?

2 A. That is correct.

3 Q. Are both of these claims based on race?

4 A. Yes.

5 Q. Is there any other discriminatory basis that you
6 are claiming that these actions were based upon, other than
7 race?

8 A. Other than race? I do believe it has something
9 to do with age as well.

10 Q. Any others, any other basis?

11 A. No.

12 Q. Is that for both the allegations of employment
13 discrimination and for the allegation of creating a hostile
14 work environment, just those two?

15 A. Yes, employment more so for both, and the hostile
16 was for race.

17 Q. So hostility just for race?

18 A. Yes.

19 Q. But race and age for the employment actions?

20 A. Correct.

21 Q. Who were the persons that you are claiming
22 discriminated against you?

23 A. Henry Rubio.

24 Q. Anyone else?

25 A. Gilberto Garcia.

M. BASTIAN

1 Q. Anyone else?

2 A. Gerasimos Menegatos.

3 Q. We have given a list of names to the reporter.

4 A. Okay.

5 Q. Is there anyone else that you are claiming
6 discriminated against you?

7 A. No.

8 Q. For Mr. Rubio, for Henry Rubio, what is his race?

9 A. Dominican descent.

10 Q. What is his name?

11 A. At the time he was principal at A. Philip
12 Randolph.

13 Q. Was he responsible for supervising you?

14 A. No.

15 Q. Did you report to him in any capacity, Mr. Rubio?

16 A. I would report to him if he assigned something to
17 me.

18 Q. What was Mr. Garcia's race?

19 A. Dominican descent.

20 Q. What was Mr. Garcia's title?

21 A. Assistant principal of security. There were a
22 number of departments that he was in charge of, world
23 languages and something else, I don't remember.

24 Q. Was Mr. Garcia responsible for supervising you?

25 A. No.

M. BASTIAN

1 Q. Did you report to Mr. Garcia in any capacity?

2 A. I was assigned to work with him, along with other
3 supervisors, at one point. So when I needed to work, when
4 I was assigned to work with him, yes, I would report to him
5 for that particular situation.

6 Q. Other than when you were assigned to work for
7 him, did you report to him in any capacity, either directly
8 or indirectly?

9 A. No, just in that capacity. My direct supervisor
10 was Gerasimos Menegatos.

11 Q. Just going back to Mr. Rubio. Were you ever
12 assigned to work for him directly?

13 A. Mr. Rubio?

14 Q. Yes.

15 A. No.

16 Q. Did you report to him either directly or
17 indirectly in any capacity at any time?

18 A. I did report to him directly if he assigned
19 something to me, then I would report to him directly. Most
20 of the times when he would assign, if there was a subpoena
21 that came from the legal department, Department of
22 Education, he would give it to me directly because part of
23 my capacity was to prepare the student documents and answer
24 the subpoena or make sure that it was prepared in an
25 appropriate amount of time and respond to all the parties

M. BASTIAN

1 that needed to respond to. So I would definitely report
2 directly to him regarding those cases.

3 Q. But other than that?

4 A. Other than that, no.

5 Q. Mr. Menegatos, what was his race?

6 A. Greek heritage.

7 Q. What was Mr. Menegatos's title?

8 A. He was the assistant principal of organization.

9 Q. Did you report Mr. Menegatos?

10 A. Yes.

11 Q. In what capacity?

12 A. Assignments, questions, concerns, ordering
13 supplies, he would set my assignments. He was in charge of
14 me, in charge of everything.

15 Q. For what time period?

16 A. I can't really remember the years, I would say
17 maybe three, four years. He left in 2000 -- he left in --
18 I can't remember the exact years.

19 Q. Do you remember most recently when you reported
20 to him. What was the most recent time period?

21 A. 2011, right before he left.

22 Q. So he left A. Philip Randolph; is that correct?

23 A. Yeah, yes.

24 Q. That was in 2011?

25 A. Yes.

M. BASTIAN

1 Q. Do you remember the month?

2 A. Say 2012, January, was early January.

3 Q. Have you had any interaction with him since then?

4 A. Oh no.

5 Q. Mr. Garcia, when was the last time that you
6 interacted with him?

7 A. 2014, January, 2014.

8 Q. Was he still working at A. Philip Randolph at
9 that time?

10 A. He was there, he left in January 2014 when I got
11 back from jury duty.

12 Q. So since he left in January 2014, have you
13 interacted with him in any way?

14 A. No.

15 Q. Mr. Rubio, is he still with A. Philip Randolph?

16 A. No.

17 Q. When did he leave?

18 A. He left in 2011.

19 Q. Do you remember the month?

20 A. December 2.

21 Q. Have you interacted with him at all since
22 December 2011?

23 A. No.

24 Q. I would like you to go through, chronologically,
25 the allegation of employment discrimination, so we will go

M. BASTIAN

1 to the hostile work environment allegations later. After
2 we go through them chronologically, we can go through them
3 in a little more detail.

4 Going chronologically, what are the employment
5 actions that you are claiming that were taken against you
6 based on race?

7 A. So in 2007 I commenced my program in school
8 counseling. Mr. Rubio and Mr. Menegatos were very much
9 aware of it because part of my internship was at A. Philip
10 Randolph, which they both approved, so that I would be able
11 to do field work there. In 2009 I met Mr. Rubio in his
12 office and I handed him a cover letter résumé, and I showed
13 him a copy of my degree that I had finished school. And I
14 handed it to him and said in the event something happens, I
15 would like to be considered. He accepted it and said okay,
16 I will hold it and I will consider you. That is in 2009.
17 From 2010 on, I began to see counselors hired, I did not
18 see any posting that the DOE says must be posted. I didn't
19 see anything on the computer. I didn't see anything
20 properly posted in the main office. So I was like kind of
21 not understanding what was going on. So then I had gone to
22 Mr. Rubio and I asked him. I said I see that you are
23 hiring counselors, he said there is a freeze going on.
24 This was in 2009. A hiring freeze, and a hiring freeze
25 meant you could only hire people who were holding on to the

M. BASTIAN

1 -- part of the license had, what is considered a bilingual
2 extension. It means that there were courses taken and a
3 test passed, in order to qualify you for that extension to
4 your license. So I was believing Mr. Rubio that this was
5 actually the case, but then I come to find out through my
6 union representation at a union meeting at my school that
7 the individuals that he had hired were not under the
8 bilingual license. That they were actually under the
9 monolingual license, the same license that I hold. So it
10 really became strange to me that if that was a fact that he
11 was able to hire monolingual people, then why was I not
12 considered. So I am truly believing him that I am going
13 with him with the freeze, but when I came to find that out,
14 I realized I was being discriminated against.

15 Q. So you believe that the hiring of the guidance
16 counselors was discriminatory against you?

17 A. Yes.

18 Q. Is that based on race?

19 A. That is based on race because he hired three
20 Hispanics and one Caucasian woman.

21 Q. Is that also based on age as well, you mentioned
22 age earlier, or is that only race?

23 A. I believe that is based on age as well, because I
24 just believe that, yes.

25 Q. Beyond the hiring of these guidance counselors,

M. BASTIAN

1 do you know, are there any other employment actions that
2 you are claiming are discriminatory against you?

3 A. Give me an example.

4 Q. So you are claiming there are a number of, or I
5 am not certain, I am trying to ascertain what the
6 employment actions that you are claiming were
7 discriminatory against you. So it's my understanding based
8 on what you just told me, you are claiming that the hiring
9 of these guidance employees, you believe was
10 discriminatory. Are there any other employment actions
11 taken by DOE employees that you also feel were
12 discriminatory?

13 A. I'm not sure if I understand.

14 Q. Were there any changes in your employment, any
15 changes in conditions, or any positions that you felt you
16 should have gotten that you also feel were discriminatory?

17 A. No.

18 Q. So beyond just the hiring of these guidance
19 counselors, these are the only employment actions that you
20 feel were discriminatory against you?

21 A. Well, outside of the animosity and the hostility,
22 if that is what you mean.

23 Q. We will get into that. I want to go into a
24 little detail to those guidance counselor positions. You
25 mentioned not being given a guidance counselor position,

M. BASTIAN

1 and you mentioned talking to Mr. Rubio about your interest
2 in that. When was that, that you first spoke to him?

3 A. I spoke to him in the summer, it was July 2009.
4 I graduated in May 2009 and I had received my license. I
5 had taken in my degree to show him. So he had known I was
6 graduated, and he, I was waiting for the license to come in
7 as soon as I received it. I took it in and I showed it
8 both to him and Mr. Menegatos, and they both knew I was
9 actively seeking out a position.

10 Q. So what did that conversation go like, what was
11 said, what was suggested?

12 A. I went into his office, it was summer, it's kind
13 of lax during the summer. He was sitting down, I said I
14 have something to show you. What he said what is it? He
15 started looking at it, he said wow. And I said please hold
16 on to this, and he said that he would, and if anything
17 opens up he said he will definitely let me know.

18 Q. This is Mr. Rubio?

19 A. Yes.

20 Q. Was anybody else present?

21 A. No.

22 Q. So it was just you and Mr. Rubio at that time?

23 A. Yes.

24 Q. What documents did you give?

25 A. A cover letter, my résumé.

M. BASTIAN

1 Q. Anything else?

2 A. A copy of the license.

3 Q. What if anything did Mr. Rubio say he would do?

4 A. He would hold on to it. In the event something
5 opens up, he will definitely let me know.

6 Q. Did he say anything else?

7 A. No. I didn't give Mr. Menegatos the paperwork,
8 but I told him about it. So he was much aware about it.
9 As a matter of fact, he is the one who said -- when I went
10 to him first, I said give everything to Rubio, let him hold
11 on to it and yeah, that is how it went.

12 Q. That was also in July 2009?

13 A. Yeah, it was in the summer.

14 Q. Was there any discussion at that time about what
15 positions he was able to hire for?

16 A. We had no discussion, he just said he would hold
17 onto the paperwork.

18 Q. Did he say anything to you about being able to
19 hire bilingual or monolinguals at that time?

20 A. There was no conversation. He just accepted the
21 paperwork and we talked for like a minute or so, and I
22 left.

23 Q. So there was no discussion beyond that, at that
24 time?

25 A. No.

M. BASTIAN

1 Q. What was your understanding at the end of the
2 discussion, what was the understanding of what the next
3 step would be?

4 A. My understanding was yes, he would hold on to the
5 paperwork, and if something happens, you know, if he was
6 considering opening up that position, he would let me know.

7 Q. Are you bilingual?

8 A. Meaning?

9 Q. Can you fluently speak more than one language?

10 A. I can understand Spanish.

11 Q. Can you speak Spanish fluently?

12 A. In conversation I will be able to.

13 Q. Fluently?

14 A. Maybe not fluently, but the gist of the
15 conversation I may be able to understand. I know many
16 Hispanic people, and I don't know if I should repeat it,
17 but my family is from Saint Thomas. We are really next to
18 Puerto Rico, so there are many Spanish speakers in my
19 family.

20 Q. Do you have any licenses, any bilingual licenses
21 or certifications?

22 A. I do not.

23 Q. Did you ever try to get any bilingual licenses or
24 certifications based on your understanding?

25 A. No.

M. BASTIAN

1 Q. Why not?

2 A. I didn't think that I needed to get a bilingual
3 license -- not license, it's an extension. It comes with
4 the license. Not all principals ask for bilingual, unless
5 there is a real need for it. So I didn't see the need to
6 pursue that. Some districts are overwhelming, depending on
7 the population of children. It could be not even Spanish,
8 it could be anything, Mandarin or any other language, and
9 it's definitely a need to have a person who is able to
10 communicate with the children, then with the parents, but
11 more so with the children, because they are there with the
12 children every day.

13 Q. So you mentioned guidance counselors subsequent
14 to this July 2009 conversation being hired at A. Philip
15 Randolph, correct?

16 A. Sorry, what?

17 Q. I believe you mentioned before there was some
18 guidance counselors that were brought on at A. Philip
19 Randolph after you had had this conversation with Mr. Rubio
20 in July; is that correct?

21 A. Starting in 2010.

22 Q. Do you remember who those guidance counselors
23 were?

24 A. Yes.

25 Q. What were the names?

M. BASTIAN

1 A. Altagracia Ramirez.

2 Q. Anyone else?

3 A. Yes, Altagracia Ramirez came first, then Lauren
4 Porzelt. She does not hold a bilingual license, I also
5 found that out. She does not hold a bilingual license, she
6 did not hold one when she was hired, and I understand she
7 does not held one now. There is a test that you have to
8 pass, and she did not pass that test.

9 Q. Anyone else?

10 A. Yes, Ezequiel Perez.

11 Q. Anyone else?

12 A. Ingrid Paulino.

13 MR. BELDNER: Do you mind if we take three
14 minutes.

15 (Whereupon, an off-the-record discussion was
16 held.)

17 Q. We are back on the record. I will go through
18 each of the individuals that you just mentioned, each of
19 their hirings, but first off, I want to backtrack.

20 You mentioned an internship at A. Philip
21 Randolph, could you please explain what that is?

22 A. Right, as part of being any position -- sorry,
23 any degree in counseling requires an internship in field
24 work, and you would need to like do a hands-on with the
25 kids. Like sort of like when doctors do residency. So I

M. BASTIAN

1 did my internship, well, one of them there, at A. Philip
2 Randolph High School.

3 Q. Did you work with anyone specifically, did you
4 have a sponsor, anything like that?

5 A. Yes, I did. Mr. Menegatos was my supervisor, in
6 addition to Mr. Brennan, because I needed to have a person
7 on site who was a licensed counselor, so it was Dennis
8 Brennan, who is now retired.

9 Q. So they helped you get this?

10 A. They were my supervisors on site. I would meet
11 with both of them. Let them know what I am doing and
12 sporadically showed them my log of services and activities,
13 because they were my signers.

14 Q. What does that mean?

15 A. My supervisors, when I return my paperwork back
16 to the program, I needed someone to be my supervisor.

17 Q. Did you find them supportive?

18 A. Mr. Brennan, yes. I dealt with him mostly.

19 Q. What about Mr. Menegatos, did you deal with him
20 at all in your internship?

21 A. He needed to approve it, for the fact that I was
22 working with the students at the school, so I hardly ever
23 met with Mr. Menegatos.

24 Q. Did you ever meet with him at all in order to get
25 his approval?

M. BASTIAN

1 A. I did, at the beginning I met with him and he
2 approved it, from there I was meeting with Mr. Brennan.

3 Q. Both of them signed off on your paperwork?

4 A. Yes, both.

5 Q. Did Mr. Brennan report to Mr. Menegatos?

6 A. He, yes.

7 Q. What was Mr. Brennan's title?

8 A. He was a counselor, college advisor, I worked
9 with him.

10 Q. We will go back to the individual hires of
11 guidance counselors after 2009. Going chronologically, I
12 will start with Altagracia Ramirez; is that correct?

13 A. Yes.

14 Q. When was Ms. Ramirez hired?

15 A. 2010.

16 Q. Do you remember the month?

17 A. September.

18 Q. Do you know what position she was hired for, her
19 title?

20 A. Guidance counsellor.

21 Q. Do you know what her qualifications were?

22 A. She mentioned to me she had come from work at
23 CUNY admissions center. It's a non-DOE employer.

24 Q. Do you know anything else about her
25 qualifications?

M. BASTIAN

1 A. She mentioned she didn't work for the Department
2 of Education and this was her first job there.

3 Q. Anything else?

4 A. She had just graduated from an under-counseling
5 program.

6 Q. Do you know what program that was?

7 A. Sorry?

8 Q. Do you know what program that was?

9 A. The name of her school, no.

10 Q. Do you know anything else about her
11 qualifications?

12 A. That is it.

13 Q. All of this information, this is from
14 conversations that you had with Altagracia Ramirez?

15 A. Yes, conversations with her.

16 Q. Do you know if Ms. Ramirez is bilingual?

17 A. Yes.

18 Q. Yes, she is bilingual?

19 A. Yes, she is bilingual. Is she a Spanish speaker,
20 is that what you mean?

21 Q. Is she a Spanish speaker?

22 A. Yes, she is.

23 Q. What is Ms. Ramirez' race?

24 A. Hispanic.

25 Q. How do you know what her race is?

M. BASTIAN

1 A. Speaking with her -- how do I know? She has
2 identified herself as being Hispanic at times.

3 Q. When did she identify herself as being --

4 A. Different conversations.

5 Q. Do you remember ballpark time frame?

6 A. I remember her speaking with a parent one time
7 and she identifying herself as being Hispanic. Standing
8 there.

9 Q. Any other times?

10 A. I hear her speaking Spanish all the time. She
11 has mentioned to me that she has traveled to Puerto Rico to
12 see her family.

13 Q. How did Ms. Ramirez apply for that position?

14 A. I don't know.

15 Q. Do you know how she came to be hired?

16 A. I don't know with what capacity. Do you mean a
17 posting, advertisement?

18 Q. Yes.

19 A. I don't know, I don't know.

20 Q. Between when you spoke to Principal Rubio in 2009
21 and the hiring of Ms. Ramirez, what did you do in relation
22 to seeking a guidance counselor position at A. Philip
23 Randolph?

24 A. Sorry, repeat that.

25 Q. Between July 2009, which I believe you said you

M. BASTIAN

1 had the conversation with Mr. Rubio; is that correct?

2 A. Yes.

3 Q. Between then and when Ms. Ramirez was hired, when
4 she came to be a guidance counselor at A. Philip Randolph,
5 did you take any action in regard to seeking a guidance
6 counselor position at A. Philip Randolph?

7 A. I did nothing, because at the time I was under
8 the assumption there was a freeze only for bilingual hires.

9 Q. There was a freeze, sorry, why did you have that
10 impression?

11 A. Mr. Rubio had told that to me.

12 Q. When did he say that?

13 A. In 2009, in September, when I had -- sorry, 2010,
14 when she was hired I had then went back to him and asked
15 him what is going on. I thought you said you weren't
16 hiring anybody. That is when he said there was a freeze
17 coming on, and he could only hire bilingual.

18 Q. So I am clear, the freeze was on monolingual, not
19 bilingual positions, is that what you are saying?

20 A. Yes.

21 Q. You didn't have this conversation with Mr. Rubio
22 until after Ms. Ramirez was hired?

23 A. That is correct.

24 Q. But before Ms. Ramirez was hired, I believe you
25 had testified before that the reason that you didn't do

M. BASTIAN

1 anything is because you thought there was a freeze; is that
2 correct, or is it that inaccurate?

3 A. That is correct, in 2009.

4 Q. So please, excuse me, I am trying to get the
5 timeline then. If you are saying you had this conversation
6 after Ms. Ramirez was hired, and you found out there was a
7 freeze, how could you be under the impression beforehand?

8 A. In 2009 when I handed him the papers, in 2010 he
9 hired her. Okay, he started hiring, I am still now going
10 with Mr. Rubio that there is a freeze going on, but in 2010
11 when she is hired, I don't know -- I am asking him what is
12 going on, are you hiring people, and he said no, there is a
13 freeze, she has a bilingual license.

14 Q. Since 2009 until she came on, you hadn't taken
15 any action at A. Philip Randolph to seek a position?

16 A. I did not, because I was waiting for him to say
17 something to me, and nothing was being advertised.

18 Q. Had you sought a position anywhere else during
19 that time period, anywhere else either within the DOE or
20 outside of the DOE?

21 A. I was making feelers and making different calls
22 and putting my name out there just in case something else
23 opened up.

24 Q. Do you remember to where?

25 A. There were so many schools.

M. BASTIAN

1 Q. Anything else said during that conversation?

2 A. No.

3 Q. Was anybody else there for that conversation?

4 A. No.

5 Q. Did you do anything else after that?

6 A. In terms of what?

7 Q. Did you go speak to anybody else, did you go --

8 A. No, because there is really nobody else to speak
9 to outside of the principal.

10 Q. Did you file a complaint of any kind at that
11 time?

12 A. No, not in 2009 -- sorry, not in 2010.

13 Q. Moving on to Ms. Porzelt, when was she hired?

14 A. I think it was April -- I believe it was April of
15 2011.

16 Q. What position was she hired for?

17 A. Counselor.

18 Q. What are Ms. Porzelt's qualifications?

19 A. What I know is she had come from Rice High
20 School, she said she was a counselor there, that is all.

21 Q. Do you know anything else about her
22 qualifications?

23 A. I don't.

24 Q. Rice High School, you know that because she told
25 that to you; is that correct?

M. BASTIAN

1 A. She did mention it to me. She also mentioned to
2 me she was in the process of still trying to get
3 credentialed for the bilingual extension. She had not
4 gotten it. She did mention she knew she would not be able
5 to pass the test because she is not a Spanish speaker, and
6 she knew she would not be able to pass the test to get that
7 extension.

8 Q. When was that conversation?

9 A. Probably like when she first started, I guess
10 around April-ish, May-ish.

11 Q. Of 2011?

12 A. Yes.

13 Q. Was anybody else there for that conversation?

14 A. No.

15 Q. What specifically did she say?

16 A. That she was in school. Actually there was a
17 person there, there was another employee there.

18 Q. What is that employee's name?

19 A. Sonia Burke, but she was asking for assistance.
20 She is a bilingual counselor. She was asking her for
21 assistance on how to take that -- how to pass the test. So
22 we were together.

23 Q. Ms. Porzelt was asking for assistance, is that --

24 A. Yes.

25 Q. From Ms. Burke?

M. BASTIAN

1 A. Yes.

2 Q. Do you remember specifically what she was asking
3 for assistance with?

4 A. She was asking for pointers on how to pass the
5 test, what does the test require, how to -- just general
6 pointers.

7 Q. Have you heard Ms. Porzelt speak Spanish at all?

8 A. Oh, never.

9 Q. Other than this conversation, was there any other
10 reason why you believe she is not bilingual?

11 A. Why she --

12 Q. Ms. Porzelt, other than this conversation you had
13 with her in April 2011?

14 A. Is there a reason she is not bilingual?

15 Q. I believe you said that she is not bilingual; is
16 that correct?

17 A. She is not bilingual. She said she is not
18 bilingual.

19 Q. During that conversation?

20 A. Not during that conversation, but in
21 conversation.

22 Q. When was that?

23 A. I don't know.

24 Q. Ballpark, if you remember?

25 A. I mean different times, we would meet up, we

M. BASTIAN

1 complaint was?

2 A. Mr. Self's claim was discrimination. I know he
3 retired in the middle of the week just like that. Just up
4 and left.

5 Q. Do you know what the result of his complaints
6 were?

7 A. I don't.

8 Q. When did you first conclude that Mr. Rubio was a
9 discriminator?

10 A. When I started hearing of the complaints from
11 other people in the building. And it seems like everything
12 in the building that was really, who had any grievance, a
13 complaint, was always African American. And I really
14 couldn't understand why because our school is very diverse,
15 but everyone in the building that was always complaining,
16 it was always a person who was African American.

17 Q. Do you remember when that was, about what time
18 period?

19 A. He started in 2007. I would probably say like
20 soon after.

21 Q. Did you feel that way before Mr. Rubio started?

22 A. No, I love A. Philip Randolph, that is why I
23 returned. I stayed there so long. I want to now -- well,
24 in June we had five retirees, so I am now probably one of
25 the leftovers at A. Philip Randolph who have a 20 year

M. BASTIAN

1 stay. I love it. I love the school.

2 Q. Do you still love it now?

3 A. Not the way I loved it prior to everything
4 happening.

5 Q. Do you -- I don't believe you mentioned
6 Mr. Fanning's name before when you were giving a list of
7 who you felt had discriminated against you. Did you feel
8 Mr. Fanning had discriminated against you?

9 A. Rephrase that?

10 Q. I don't believe before, when you went through a
11 list of people that had discriminated against you that you
12 had mentioned Mr. Fanning's name. He is the current
13 principal?

14 A. Yes, he is.

15 Q. Do you feel that Mr. Fanning had discriminated
16 against you?

17 A. I don't think Mr. Fanning discriminated against
18 me the way that Mr. Rubio has.

19 Q. Do you feel that he has at all?

20 A. I'm not sure if I understand the question.

21 Q. Do you feel that --

22 A. Has he done anything?

23 Q. Yes.

24 A. I would say no.

25 Q. Has he said anything that you feel was

M. BASTIAN

1 discriminatory towards you?

2 A. He has not. However you know, he was -- no, I
3 would say no.

4 Q. If you don't mind, I will back up and backtrack
5 to Ms. Porzelt. After Ms. Porzelt was hired, did you do
6 anything next, did you go attempt to speak to Mr. Rubio or
7 anybody else?

8 A. No.

9 Q. Did you file a complaint?

10 A. No, my complaint came after Mr. Perez -- I am not
11 sure if Paulino was there yet, it came after Mr. Perez, I
12 went to OEO.

13 Q. Between when Mr. Ramirez came on, and Ms. Porzelt
14 came on, did you do anything specifically in regard to
15 getting a guidance position at A. Philip Randolph?

16 A. No.

17 Q. Did you attempt to speak to Mr. Rubio again about
18 getting a position?

19 A. Between Ms. Ramirez and --

20 Q. Ms. Porzelt. I believe you said Ms. Ramirez was
21 the first one to come on and Ms. Porzelt was the next one
22 to come on after Ms. Ramirez; is that correct?

23 A. Yes.

24 Q. After I guess after Ms. Ramirez came on and
25 before Ms. Porzelt came on, did you attempt getting a

M. BASTIAN

1 guidance counselor position again with Mr. Rubio?

2 A. I had not.

3 Q. The next person to come on was Ezequiel Perez; is
4 that correct?

5 A. Yes.

6 Q. When was he hired?

7 A. He was hired, I think it was in the spring. I
8 remember spring.

9 Q. Do you know a ballpark school year?

10 A. I don't. I think I am confusing two dates -- I
11 am confusing their dates, I am not sure.

12 Q. If Ms. Porzelt came on in April 2011, it would
13 have been after that?

14 A. Right, it would have been after that. That is
15 why I know there is a discrepancy with the dates. First it
16 was Altagracia Ramirez then it was Lauren Porzelt, then it
17 was Ezequiel, I am not sure the dates.

18 Q. But it was after Ms. Porzelt and it was -- was it
19 before Ms. Paulino?

20 A. It was before Ms. Paulino, yes, she was the last
21 one hired.

22 Q. So it was between the two of them?

23 A. Yes.

24 Q. Do you know what position Mr. Perez was hired
25 for?

M. BASTIAN

1 A. Counselor.

2 Q. Do you know what Mr. Perez's qualifications were?

3 A. Qualifications?

4 Q. His experience, training.

5 A. What Mr. Perez said to me in conversation, was
6 that he was a parent coordinator coming from, I think it
7 was Satellite Academy, and that was it. He had come from
8 being dean of parent coordinating.

9 Q. Do you know anything else about his
10 qualifications?

11 A. No.

12 Q. Do you know if Mr. Perez is bilingual?

13 A. He is a Spanish speaker.

14 Q. Do you know if he is fluent?

15 A. I would say -- I would, I probably would say he
16 is fluent. You mean the level he speaks, or the speed he
17 speaks?

18 Q. Yes, I guess the level in which he speaks,
19 understands.

20 A. I don't know the level he understands, I heard
21 him speak Spanish before.

22 Q. What is Mr. Perez's race?

23 A. Dominican, he identifies himself as Dominican
24 heritage.

25 Q. Has he identified himself as Dominican to you?

M. BASTIAN

1 A. He has.

2 Q. Do you remember when?

3 A. What date?

4 Q. Ballpark time frame.

5 A. Shortly after he arrived, talking, I heard him
6 speaking in conversations with the assistant principal, Mr.
7 Calcano, and it was often Mr. Calcano and Mr. Perez and you
8 know, other people from other departments, but they were
9 always being Dominican and congregating in his office all
10 the time. So it was like really obviously, you know, it
11 was really not hard to figure out.

12 Q. Does that mean they were speaking in Spanish?

13 A. Yes.

14 Q. So they would speak Spanish together?

15 A. Yeah, they would congregate, and when Ms. Paulino
16 came, she joined in, it was always like a group session of
17 Dominican people.

18 Q. Who were these other individuals that you just
19 mentioned?

20 A. It could be people from other departments.
21 School aides, just people in school, different --

22 Q. Do you remember some of their names?

23 A. Yeah, Podomo, Amin.

24 Q. Spell that?

25 A. A-M-I-N, Podomo. His first name is Oscar and his

M. BASTIAN

1 last name is spelled G-A-R-U-L-L-O-N. These were the
2 assistants that came along with Mr. Rubio, so they would
3 always be in Mr. Calcano's office, always groups at a time.
4 Either engaging in lunch or just general conversation, in
5 very clique kind of formation.

6 Q. Do you know how Mr. Perez came to apply for the
7 counsellor position?

8 A. I do not.

9 Q. Do you have any idea how he came to be hired?

10 A. How he learned of the position?

11 Q. And how he ended up getting employed at the
12 school?

13 A. I do not.

14 Q. Going back to the conversations, where you said
15 Dominican members of the staff would congregate together,
16 do you know if there were any non-Dominican members of the
17 staff that were part of the conversation?

18 A. No, it was always Spanish, it was never anybody
19 else other than Dominican.

20 Q. Would the other members of the staff branch out
21 and speak to you and other non-Dominican members of the
22 staff?

23 A. Say again.

24 Q. Would Mr. Perez speak to yourself and other
25 non-Dominican members of the staff?

M. BASTIAN

1 A. Yes, he would.

2 Q. And Mr. Calcano?

3 A. Yeah, they have to. I am talking about when they
4 all got together.

5 Q. But they didn't just stick to themselves the
6 entire time?

7 A. Most of the time, yes.

8 Q. But not all the time?

9 A. Not all the time. They had to come out of the
10 office at some point to do some work. Most of time you
11 always see them congregating, always eating lunch together
12 and no one else would be invited. But that group -- yeah.

13 Q. Did you ever ask to join them for lunch?

14 A. No.

15 Q. Do you know if anybody ever got turned down when
16 they asked to join them?

17 A. I don't know if anybody ever asked, no.

18 Q. Between the hiring of Ms. Porzelt and the hiring
19 of Mr. Perez, did you approach Mr. Rubio about guidance
20 position?

21 A. I didn't approach him. I asked Mr. Menegatos
22 what was happening. And he would just get rid of me real
23 quickly like "go ask Rubio, go ask Rubio." That was
24 usually his response.

25 Q. That was on more than one occasion?

M. BASTIAN

1 A. Yeah.

2 Q. Do you remember what you said to him,
3 specifically?

4 A. I asked him is the hiring freeze lifted, I asked
5 why is there no posting of any position, and he would never
6 have a real answer for me.

7 Q. What would he say?

8 A. "Go ask Rubio."

9 Q. Anything else?

10 A. No, "go ask Rubio, go ask Rubio."

11 Q. Do you know about when these conversations took
12 place?

13 A. They were just throughout, I don't have a
14 specific date and time. I do remember one time Mr.
15 Menegatos did call me into his office, and I didn't know
16 why, there was a summons there, so I went. And he asked
17 for my Social Security number. And I gave it to him. I
18 didn't know what was really going on. Then he said, "I am
19 trying to hire you." I said hire me? Did something
20 happen? I am happy, you know, and he said, "I am trying to
21 hire you, but it won't go through."

22 Q. So he couldn't get it in the computer, or --

23 A. He said it won't go through. He asked for my
24 Social Security. How you hire is from your Social
25 Security. DOE has something called Galaxy. You put the

M. BASTIAN

1 individual's Social Security number, and he said it won't
2 go through, and I said why wouldn't it go through, but
3 later found that he was not doing that, he was fooling me.

4 Q. How do you know that?

5 A. That he was fooling me?

6 Q. Yes.

7 A. That is not how you do it. There is no such
8 thing as trying to put in a Social Security number and say
9 it won't go through. If you put a Social Security number,
10 it will go through.

11 Q. What is this in regard to? Could you explain the
12 process to me, I am not certain I understand.

13 A. There is certain information you need in hiring
14 someone. He arbitrarily called me into his office and said
15 give me your Social Security number. I didn't know why he
16 wanted that because he already had it. Once you pull a
17 person up, their whole profile would come up. Then he said
18 he was trying to hire me. I believed it until I found out
19 that was not true. He was fooling me, I don't, I don't
20 know why.

21 Q. You were the one that found out that he was
22 fooling you?

23 A. Yes. I found out that is not true. Once your
24 Social Security number is entered, if you are going to be
25 hired, you are hired, there is no such thing as it cannot

M. BASTIAN

1 go through, as if there is some kind of malfunction with
2 the computer.

3 Q. When he told you that it wouldn't go through, did
4 you think right there that he was lying, was it later you
5 came to the conclusion that --

6 A. It was later. At the beginning I believe him,
7 but it was later that I realized he was not telling me the
8 truth.

9 Q. What happened later that made you realize that?

10 A. I asked around and I called downtown, I called
11 HR.

12 Q. When was that?

13 A. Probably a month later, afterwards.

14 Q. Sorry, backing up, I don't know if we established
15 when this event with Mr. Menegatos happened. When did you
16 speak with Mr. Menegatos, when did he attempt to put in the
17 Social Security number?

18 A. When?

19 Q. Month, year?

20 A. I don't remember, sometime in 2011.

21 Q. You called HR about a month later, is that right?

22 A. I did call.

23 Q. What did they say to you?

24 A. "It's not how that's done."

25 Q. Did you talk to Mr. Menegatos about that after

M. BASTIAN

1 you had your conversation --

2 A. No, I didn't say anything to him.

3 Q. What about between when he attempted to put it in
4 and when you called HR, did you have any more discussions
5 with Mr. Menegatos?

6 A. No.

7 Q. After you called HR, did you discuss with anybody
8 else, did you discuss him attempting the same thing with
9 anybody else, did you file a complaint with OEO?

10 A. I did, OEO.

11 Q. When was that?

12 A. I can't recall the date.

13 Q. Was that specifically regarding Mr. Menegatos,
14 that was about his conduct, that OEO complaint?

15 A. No, it was about the situation that had occurred
16 about the illegal hiring practice.

17 Q. So it was regarding the guidance counselor
18 hirings?

19 A. Yes.

20 Q. Did it mention Mr. Menegatos --

21 A. No.

22 Q. His attempts to put you into the computer?

23 A. No.

24 Q. Going back to the hiring of Mr. Perez, once
25 again, do you believe that the hiring of Mr. Perez was

M. BASTIAN

1 Q. Do you know how Ms. Paulino came to apply for the
2 guidance counselor position at A. Philip Randolph?

3 A. I do not know.

4 Q. Do you know how she came to be hired?

5 A. I do not know how she got hired.

6 Q. Between the hiring of Mr. Perez and Ms. Paulino,
7 did you have any discussions with Mr. Rubio about seeking a
8 guidance position?

9 A. I did not.

10 Q. Did you speak to anybody else?

11 A. I did not.

12 Q. Did you take any actions at the school to seek a
13 guidance position? Did you look for postings in regard to

14 A. Philip Randolph?

15 A. Did I look for postings at A. Philip Randolph?

16 Q. Yes.

17 A. I looked at the -- at the vacancy board all the
18 time to see if anything was posted, but nothing was ever
19 posted.

20 Q. What is that? A vacancy board?

21 A. Any time a position is available, the principal
22 will post it. It's like a -- I don't know, a regular
23 bulletin board in the main office and post positions.

24 Q. Is that just for positions at A. Philip Randolph?
25 Is that DOE-wide?

M. BASTIAN

- 1 A. They all showed up with Mr. Rubio.
- 2 Q. So when he started?
- 3 A. They all came --
- 4 Q. The same time?
- 5 A. All of them came with him. Same time.
- 6 Q. What about the supervisors?
- 7 A. No. Supervisors came at different times.
- 8 Q. When was the most recent hire of the supervisors
- 9 you referred to?
- 10 A. The most recent hire?
- 11 Q. Yeah.
- 12 A. I would say Daniel Calcano 'cause he started off
- 13 as an attendance teacher and moved into -- Mr. Rubio
- 14 appointed him immediately to be a supervisor. Immediately.
- 15 Without even posting that position.
- 16 Q. Immediately when Rubio started?
- 17 A. No. Immediately when he -- when he was able to,
- 18 I guess, finish all his -- his program of study.
- 19 Q. Do you know about what time period that was?
- 20 A. It had to be 2011 because it happened while he
- 21 was still in the building. He left 2011. So, yeah, it was
- 22 in 2011.
- 23 Q. What about before -- before Calcano?
- 24 A. Before?
- 25 Q. Of the four individuals that I believe you

M. BASTIAN

1 Q. Did you allege anything in this complaint other
2 than these guidance hirings?

3 A. No.

4 Q. Do you know what the result of the Special
5 Commissioner of Investigations investigation was?

6 A. Yes. Yeah.

7 Q. What was that?

8 A. I got a phone call from the investigator and it
9 said that it was unsubstantiated. However, she said that
10 doesn't mean that something didn't happen. She said that
11 we just don't have anything.

12 Q. Did you do anything after getting that phone
13 call?

14 A. I forwarded that to my attorney.

15 Q. Did you ever apply again for guidance counselor
16 positions at A. Philip Randolph?

17 A. With Rubio?

18 Q. Sure. Yes, with Mr. Rubio.

19 A. No. No, I never applied for anything. It was
20 nothing to apply for. There was no -- there was no posting
21 to apply to anything.

22 Q. Were there any other hirings after Ms. Paulino?

23 A. No. There was no hiring after Ms. Paulino.

24 Q. Did you apply after Mr. Rubio left for a guidance
25 counselor position at A. Philip Randolph?

M. BASTIAN

1 A. I applied recently.

2 Q. When was that?

3 A. 2014.

4 Q. And what was the result?

5 A. I received an e-mail from the principal's
6 secretary telling me that the position was filled. I don't
7 know anything past that.

8 Q. Do you know what month this was?

9 A. June.

10 Q. Are you alleging that this was discriminatory?

11 A. No.

12 Q. Did you apply for any other guidance counselor
13 positions at A. Philip Randolph High School after Mr. Rubio
14 left?

15 A. Just the one that I mentioned just now.

16 Q. Just in June of 2014?

17 A. Yeah.

18 Q. Did you apply -- continue to apply to other
19 schools?

20 A. I did. I continued to apply on -- looking again
21 through the DOE's directory and just, you know, reading up
22 on schools sometimes I'd be interested in, sending out my
23 paperwork to them.

24 Q. Did you receive any of these positions?

25 A. No.

M. BASTIAN

1 Q. Now, in total of all your guidance counselor
2 applications to DOE facilities, other than at A. Philip
3 Randolph, are you claiming that any of those was
4 discriminatorily denied to you?

5 A. I never -- I never had an -- I didn't interview
6 for anything. I sent stuff out. Some schools would send
7 me replies that they don't have anything available right
8 now or we'll keep your stuff on file, things like that, but
9 it was never a chance where I interviewed.

10 Q. Okay. But are you claiming that it was -- that
11 you were discriminatorily denied an interview? Are you
12 claiming that at any of these other positions?

13 A. No, they just never answered. There was no
14 response.

15 Q. Okay. So you're not claiming discrimination --

16 A. Oh, no.

17 Q. -- in regard to any of these other applications?

18 A. No.

19 Q. Okay. Community associate hirings that you
20 mentioned in regard to Mr. Rubio, did all those take place
21 when he came to the school?

22 A. They -- I'm assuming they were already hired
23 because they came with him.

24 Q. So was that prior to 2008?

25 A. Yes, it had to be. Their hiring had to be

M. BASTIAN

1 before -- I guess he -- they came with him. When he --
2 when they -- when he came, they came with him.

3 Q. Okay. And he came around 2006; correct?

4 A. Correct. I guess they were already hired. I
5 think the majority of them -- he came from Taft High
6 School, and I know the majority of them came from that high
7 school.

8 Q. So these are people that he had worked with
9 before?

10 A. He knew. Mm-hmm.

11 Q. What about the administrators, do you know if
12 those were people that Mr. Rubio had worked with before as
13 well?

14 A. I know he worked with Gilberto Garcia because
15 Gilberto would always talk about how they knew each other
16 and worked with one another. Mr. Pepin, not really. I
17 didn't really have that much contact with him. And
18 Mr. Casares, I believe, knew Mr. Rubio because he had
19 mentioned -- they belong to this -- this organization
20 called ADASA.

21 Q. What is that?

22 A. ADASA. ADASA --

23 MR. BELDNER: Can you spell it?

24 THE WITNESS: Yes. A-D-A-S-A.

25 A. ADASA stands for the American Dominican,

M. BASTIAN

1 A-D-A-S-A. It stands for the American Dominican
2 Association for Supervisors and Administrators. And I know
3 that Mr. Casares -- Mr. Rubio is the president. You can
4 find all that information on the computer on Google. He is
5 the president. And Mr. Casares, Mr. Pepin, and Mr. Garcia,
6 and Mr. Calcano are all members of ADASA.

7 Q. So did Mr. Rubio know them from that?

8 A. Oh, yes.

9 Q. You mentioned before being denied training
10 courses?

11 A. Yes.

12 Q. When was that?

13 A. It was provided from probably from 2008 up until
14 I stopped asking. I would ask for training in -- in Excel,
15 in Word, in anything that I felt would benefit me to
16 upgrade my skills, and I was always turned down. I was
17 sent to a training for ATS. That's only because it was Mr.
18 Menegatos wanted to give me a new job. He wanted to give
19 me added responsibility, so he sent me out so that I could
20 learn it.

21 Q. When was that?

22 A. Probably somewhere near 2008.

23 Q. You said that you stopped asking. Do you know
24 when that was? Was that around 2008?

25 A. No, probably -- no. Probably about 2010. Yeah,

M. BASTIAN

1 I just gave up and stopped asking to go to workshops and
2 PDs because I always knew the answer would be no. However,
3 I used to see the community assistants always being sent
4 out to go for training, and training that was -- there was
5 an arbitrations that was passed by the union, United
6 Federation of Teachers for school secretaries.

7 But at A. Philip Randolph, we had still people --
8 the principal violating the UFT arbitration rule that said
9 no other title could work in the school secretary's
10 capacity. However, many of the community assistants were
11 still being -- were working in the capacity of a secretary,
12 which that's a job that required a license, and was sent
13 out on professional developments and all other workshops.

14 Q. So during the 2008/2009 school year, do you know
15 what trainings you asked to receive?

16 A. I would look -- anything that I could find. If
17 it had to do with Excel, I wanted to broaden my experience
18 on that. Anything that had to do with Word. There were
19 other workshops that didn't really deal with the computer.
20 It was just about the DOE, period. I wanted to do that but
21 never could.

22 Q. Who did you ask?

23 A. Oh, Mr. Menegatos.

24 Q. During the 2009/2010 school year, did you ask
25 Mr. Menegatos to train -- attend any training sessions?

M. BASTIAN

1 A. When I would find something, now and again I
2 would ask and see what he would say, but it was always
3 like, "No, you can't go. We need you here. You've got to
4 do this, you have to do that." But in the meantime, I'm
5 seeing other people leave, and I really couldn't understand
6 why I, the -- the secretary with the license, I'm not being
7 afforded these workshops, but people who do not have these
8 workshops are being allowed to go.

9 Q. Okay. But during 2009/2010 school year, do
10 you -- do you remember asking Mr. Menegatos to --

11 A. Yes, a couple times.

12 Q. Do you remember what those trainings were?

13 A. It was either about something I found on -- on
14 the computer about computers, expanding in Excel, expanding
15 in Word, or some other computer program I was trying to
16 learn.

17 Q. Do you remember when you asked him?

18 A. Not really.

19 Q. Ballpark?

20 A. What month? You want a month?

21 Q. If you can remember.

22 A. Sometime in the fall, sometime in the spring.

23 October?

24 Q. Of 2009?

25 A. Mm-hmm.

M. BASTIAN

1 Q. What did Mr. Menegatos say to you in response to
2 your request?

3 A. No. You -- we need you here.

4 Q. Did any other secretaries attend these trainings?

5 A. Ms. Wyde (phonetic) is the -- two of us. She's
6 the only other secretary. Her -- she does payroll. She
7 would go on -- on professional developments, but her
8 professional developments related directly to her.
9 Payroll.

10 Q. Do you know if she asked to --

11 A. Oh, I --

12 Q. -- go to any of these trainings?

13 A. I don't know.

14 Q. Do you know if she attended any of these
15 trainings that you asked to attend?

16 A. I know she went on a couple of them 'cause I
17 remember her leaving the building.

18 Q. Which ones?

19 A. It was one of them regarding computers. Several
20 of them.

21 Q. Do you remember which ones?

22 A. I'm not sure which one -- which ones.

23 Q. Was it a training that you had asked to attend?

24 A. Yes.

25 Q. And did Mr. Menegatos -- how did he respond?

M. BASTIAN

1 A. I'm sorry?

2 Q. In regard to that training that Ms. Wyde
3 attended, how did Mr. Menegatos respond when you asked to
4 attend?

5 A. How did he respond to me?

6 Q. Yes.

7 A. He said, "No. You need to stay here. We need
8 you to stay here at school."

9 Q. What is Ms. Wyde's race?

10 A. African-American.

11 Q. Are you claiming that these trainings were
12 discriminatorily denied to you?

13 A. Yes.

14 I'm claiming that other -- other staff members,
15 community assistants were allowed to go to these trainings,
16 but I was not. Many of these trainings pertain to -- to my
17 job responsibilities as a pupil accounting secretary and
18 learning more about different computer programs. I was not
19 allowed to go. Other members of the staff, community
20 assistants in particular, were allowed to go.

21 Q. What basis do you believe that this was
22 discriminatory on?

23 A. They were Hispanic. They did not have a license.
24 They had no -- they had really no business at -- being at
25 these workshops. They really did not because they did --

M. BASTIAN

1 they were not licensed to be there, so they -- they would
2 -- but they were allowed to go. I had the -- the license
3 and was not allowed to go.

4 Q. So race?

5 A. Yes.

6 Q. What about age?

7 A. No.

8 Q. Why do you believe it was based on race?

9 A. Because the persons that I noticed leaving the
10 building to go to workshops were all Hispanic.

11 Q. But you said Ms. Wyde went to one of these
12 trainings; correct?

13 A. Ms. Wyde went to -- Ms. Wyde went to one, yeah,
14 but the majority of them that she would go to would be --
15 Ms. Wyde plays two roles: She does payroll and she's a
16 principal secretary. So there were times when she had to
17 go and -- and attend workshops for payroll. However, she
18 did go to some of the computer workshops as well.

19 Q. Other than the persons that were going to this,
20 is there any other reason why you think this was based on
21 race?

22 A. I believe that Mr. Rubio did not want me to
23 advance my skills.

24 Q. Anything else?

25 A. No.

M. BASTIAN

1 Q. Did you talk to anybody about these training
2 courses?

3 A. No.

4 Q. Did you file an OEO complaint about these
5 training courses?

6 A. I don't think I put that in my complaint.

7 Q. You mentioned being transferred to, I believe,
8 pupil personnel, pupil records; is that correct?

9 A. Pupil personnel, it's like a department. It's
10 still in guidance. That's another name for guidance, but I
11 guess I was transferred to records.

12 Q. When was that?

13 A. 2008.

14 Q. You also mentioned giving -- being given
15 undesirable assignments; is that correct?

16 A. Yes.

17 Q. Was that in connection to the pupil personnel
18 records?

19 A. Yes.

20 Q. To the transfer of the records room; is that
21 correct?

22 A. Yes, it was a split position. That split
23 position, what it did was -- well, of course, the records
24 room was a smaller room where I was in charge of
25 maintaining both current -- current and archives. Archives

M. BASTIAN

1 was -- is all students starting from 1983, our first
2 graduating class. I was in charge of all that. I'm sorry,
3 read that question to me again.

4 Q. I was just asking -- you've made a mention of
5 being given undesirable assignments. I want to know if
6 that was in regard to your transfer to pupil personnel
7 records or is that something in regard to something else?

8 A. That was in regard to, I believe, my race. I
9 also believe that that was in regard to -- I filed --

10 Q. Sorry, I'm just asking about the actions
11 themselves --

12 A. Okay.

13 Q. -- right now. So I'm just trying to figure out
14 what assignments, what actions --

15 A. Okay.

16 Q. And I'm trying to understand the timeline.

17 A. Okay.

18 Q. So that was my question. The undesirable
19 assignments that you're referring to. Let's put it this
20 way: What assignments are you --

21 A. Were they?

22 Q. -- referring to? Yeah.

23 A. Okay. I was assigned to work with five assistant
24 principals, every day a different assistant principal for
25 several hours during the course of the day. The -- the

M. BASTIAN

1 assignments that I -- that I received or I was supposed to
2 perform were menial for someone with my experience.

3 Q. When were you assigned to these assistant
4 principals?

5 A. When?

6 Q. Yes.

7 A. Oh, 2008.

8 Q. And how long were you assigned to these assistant
9 principals?

10 A. Meaning?

11 Q. Up until when.

12 A. Oh, up until 2010. I would say '10, maybe '11,
13 I'm not sure.

14 Q. And do you believe your assignment to these
15 assistant principals was discriminatory?

16 A. I do.

17 Q. Is that based on your race?

18 A. Yes.

19 Q. Is that based on age?

20 A. No.

21 Q. Is that based on anything else?

22 A. It's based on race and it's based on the hostile
23 work environment that I -- that I was subjected to.

24 Q. Other than the work environment that you just
25 mentioned, is there any other reason why you believe that

M. BASTIAN

1 this was discriminatory?

2 A. Say that again, please.

3 Q. Other than the work environment that you just
4 mentioned, is there any other reason why you believe that
5 this was discriminatory based on your race?

6 A. No.

7 Q. Being this assignment to these APs.

8 A. I believe that it had to do with retaliation,
9 because I had filed two grievances on Rubio. And after
10 that, he decided that he was going to change my -- change
11 my -- my job responsibilities. When he moved me from the
12 college office, I had -- he moved me to put a school aide
13 there --

14 Q. I'm sorry, when did he move you?

15 A. I'm not sure of the date.

16 Q. Is this 2008?

17 A. Could be. I'm not quite sure of the date.

18 Q. Well, ballpark. I don't need a month. What
19 school year are we talking about?

20 A. I don't remember.

21 Q. What grievances are we talking about?

22 A. The first grievance I filed was because he moved
23 me from the college office, and that's when he had given me
24 the assignments to work with the assistant principals. I
25 was being praised for doing a wonderful job, and then all

M. BASTIAN

1 of a sudden I was moved without provocation.

2 At that time, I worked with the assistant
3 principals doing very medial tasks; however, the community
4 assistants were still enjoying their offices and enjoying
5 their state-of-the-art equipment, and I was moving around.
6 I had no office at that time. I was -- it was in between
7 being moved into the records room and not having an office.

8 Q. Sorry, this was before you moved to the records
9 room?

10 A. That's before I moved to the records room. I had
11 no office. I had a locker.

12 The other grievance was because I had requested
13 to speak with Mr. Rubio at a meeting, and he then had Elvin
14 Bautista, one of the community assistants, sit at the
15 meeting -- sit at the meeting. And I thought that it was
16 his place to have him -- to ask him to please leave,
17 because he did not know what we were going to speak about.
18 The only person that's really entitled to be at a meeting
19 with me and the principal would've been my immediate
20 supervisor.

21 Q. So these grievances, you just discussed what they
22 were in regard to, but who did you file these grievances
23 with? Did you file these grievances with anybody?

24 A. With the UFT.

25 Q. Were they brought to the attention of Mr. Garcia?

M. BASTIAN

1 A. Mr. Garcia? No. Mr. Rubio?

2 Q. No. Mr. Garcia.

3 A. He would not --

4 Q. He wouldn't know about them?

5 A. Well, he had no role in it. He doesn't play a
6 role in grievances.

7 Q. Okay. But you were saying that Mr. Garcia is the
8 one that assigned you these undesirable assignments?
9 That's correct?

10 A. No. That was Mr. Menegatos.

11 Q. Does Mr. Menegatos have any reason to know of
12 these grievances?

13 A. He does. I'm sorry, he did know about them.

14 Q. How did he know?

15 A. I am assuming that Mr. Rubio told him about them.

16 Q. Did you ever discuss these grievances with
17 Mr. Menegatos?

18 A. No.

19 Q. Did he ever mention them to you?

20 A. No.

21 Q. When did you file the first grievance?

22 A. I don't remember.

23 Q. What did you do to file the grievance, what
24 actions did you take?

25 A. The steps?

M. BASTIAN

1 "Disturbing me? Why would you be disturbing me?" I said,
2 "The music is pretty loud, but, you know, you're not
3 disturbing me." He said, "Are you sure?" I said, "Yes, I
4 am sure. You're not disturbing me." And then he said,
5 "Are you sure I'm not disturbing you?" I'm like, "Yes,
6 you're not." So he said, "Oh," and then he's like looking
7 at me, and I'm like, "Why would you be disturbing me?" And
8 then the look on his face was like, "Oh, you know why. You
9 know why you're -- I'm disturbing you because -- I'm
10 disturbing you because it's classical music, and that is
11 not something that you understand." It was very obvious.
12 His -- his behaviors were ridiculous.

13 Q. Any other instances or comments?

14 A. Outside of Malcolm X and the wig, lactose
15 intolerant, grits, nothing I can think of right this very
16 minute.

17 Q. Okay. So let's go through these then.

18 So the lactose intolerance comment, can you
19 explain what happened there?

20 A. It was very early -- I get put to work very early
21 in the morning, probably like a little bit after 7:00, and
22 I had come in to -- to collect my mail and move my card.
23 He had just arrived, probably maybe 15, 20 minutes in, and
24 there was one of the community aides there, because she's
25 in charge of the doing, what they call, morning attendance

M. BASTIAN

1 of staff members who are absent or late. She has to make a
2 running log of that.

3 So then he called one of the school aides,
4 Mr. Waters -- Darius Waters, and Darius did not answer him
5 at first. And then he called him again soon after, and
6 then Darius responded that he was in the -- in the men's
7 room, the bathroom. So I'm still there collecting my mail,
8 and he says to him, "Hurry up. Wherever you are, hurry
9 up." So he said, "I'm in the bathroom. I'm en route." So
10 then Mr. Garcia decided to say, "Oh, don't they know
11 they're lactose intolerant?" So then I look up and I said,
12 "Wow." And he looks at me and says, "Oh, right,
13 Ms. Bastian? Right, Ms. Bastian?" And I said, "Well, who
14 are you referring to in terms of lactose intolerant?" And
15 then he just marched out of the office.

16 Q. What happened next?

17 A. Oh, I reported -- I reported him to
18 Mr. Menegatos. I reported the incident to Mr. Menegatos,
19 what had happened.

20 Q. And what happened after that?

21 A. He sent me the link to OEO to file the complaint.

22 Q. And what about after that?

23 A. I did not file a complaint in writing, but I
24 called. I filed my complaint later, way later with OEO,
25 but it was during the time that I had gone down there

M. BASTIAN

1 regarding the one time that I had went there. I reported
2 that then.

3 Q. I'm sorry, I didn't --

4 A. I reported it verbally but not by the link to
5 OEO, the situation with the lactose intolerant.

6 Q. Who did you speak to?

7 A. I don't know. I didn't -- I probably got the
8 information at home.

9 Q. Do you know what date this was?

10 A. It had to be a couple days after the incident
11 happened.

12 Q. What was said during that conversation?

13 A. I reported what happened and I was told to file
14 via the link.

15 Q. The OEO person told you to file it via the link?

16 A. Yes, but I never did. I just -- I reported it
17 verbally.

18 Q. Why didn't you file via the link?

19 A. I don't know.

20 Q. Did you do anything else after that?

21 A. No.

22 Q. I think you just made a reference to your other
23 OEO complaint that we discussed regarding the guidance
24 counselor positions; is that correct? Did that happen
25 after this?

M. BASTIAN

1 to eat and probably a milk product, so that prompted
2 Mr. Garcia to say, "Don't these people know that they're
3 lactose intolerant?"

4 Q. Other than that, is there any other reason why
5 you think this comment was referring to African-Americans?

6 A. Just outside of creating a hostile work
7 environment.

8 Q. You mentioned an incident regarding classical
9 music?

10 A. Yes.

11 Q. Can you tell me about that?

12 A. The classical music incident was when I had
13 just -- maybe a month later. The way this office is
14 constructed, there's an office -- once you walk into the
15 suite, there's a huge office. It's where I was placed,
16 with large panes. So it's like a -- it's really like a
17 fish bowl. You can like kind of see right in there because
18 there are three huge windows.

19 Mr. Garcia's office is more tucked away, so you
20 would really need to go into a small area to see his. He
21 would blast music. This particular day he blasted
22 classical music because he wanted me to hear it, and I did.
23 And so he hurries up and run over to me. I'm not really
24 paying attention to him. I'm just trying to do my job.
25 And he's saying to me, "Oh, I hope I'm not bothering you."

M. BASTIAN

1 I hope I'm not disturbing you." And I said, "No, I'm
2 fine." Outside of the music, I mean, I hear it, it's loud
3 but not really. And he said, "Are you sure?" I said --
4 and I'm telling him -- I keep telling him, "I'm sure.
5 You're not bothering me."

6 What he was trying to get a rise out of me was to
7 say why this is bothering you because you are black. I'm
8 playing classical music, you know nothing about it. That's
9 what he was trying to do, and that's why I reported him to
10 Mr. Fanning about it immediately because these -- these
11 were part of the tricks and the games and the ploys that he
12 would do on a daily basis. Anything to offend, anything to
13 insult African-Americans, he would do it, from doing --
14 he -- at one point, he did a minstrel dance.

15 Anything that he could do, in his mind, he
16 thought it was just to make other people laugh when he had
17 an audience, but he -- what he was doing was insulting
18 African-Americans on a daily basis. I've seen him yell at
19 some of our school aides who are no longer there. They've
20 moved on to other school. These are adult men but they're
21 school aides, so he had an upper hand over them with
22 authority. So he would yell at them and demean them in
23 public.

24 Q. Just backing up a little bit. So a month
25 later -- I don't know if we actually established when the

M. BASTIAN

1 lactose comment was made. What month and year was --

2 A. That was in September because we had just got
3 back.

4 Q. What year?

5 A. Probably either '10 -- maybe '09 or '10. I don't
6 remember. It was at the beginning of the school year.

7 Q. And the classical comment was?

8 A. No, that came later. That came probably in 2012.

9 Q. Okay. Going back to classical music comment, why
10 do you feel, specifically, that the classical music was
11 meant to bring up some sort of racial stereotype?

12 A. The way that it happened. He -- his running over
13 to my office. He did not ask me am I being bothered
14 because of volume. That's not what he asked. He just
15 asked am I being bothered, is it bothering me, and I'm
16 telling him no. It is loud, so if it's -- if I'm -- if
17 you're blasting the radio and I sit next door to you,
18 common sense would say, you come over, say, "Melissa, my
19 radio is on. Is it too loud for you? Is that bothering
20 you?" That's what common -- a person with common sense
21 would do. It had nothing to do with volume. It had to do
22 with the kind of music that was being played.

23 Q. Why do you think that was because of your race?

24 A. Because he continued to create a hostile
25 environment. Anything that he could do to get a rise out

M. BASTIAN

1 of an African-American person, he was doing it. Any
2 comment, any behavior, any situation that he could do
3 always was about race.

4 In his interactions with other people from, I
5 guess, Dominican Republic, it was always cordial. It was
6 always a friendly, you know, how are you, kissy-kissy,
7 sitting down for lunch. Any time there was a situation or
8 any kind of engagement with a person who was
9 African-American, it was always a hostile, argumentative,
10 rude, obliherant (sic). His -- that's how his behavior
11 would be any time it had to do with African-Americans.

12 Q. Were there any African-Americans that Mr. Garcia
13 got along with?

14 A. If there are, I don't know any.

15 Q. How was Mr. Garcia's relationship with Ms. Wyde?

16 A. I don't really know because she was in an office
17 far away. She really had no contact with people unless
18 people go to the principal's office, but I would have more
19 contact because I'm all over the school, you know, I work
20 with teachers. I work with other counselors, so I'm all
21 over. So chances are that she's going to have contact with
22 him unless he goes there.

23 In the time that I've seen him there, I've always
24 seen it as he goes, he gets what he needs and he leaves.
25 I've never seen him act up with her, and probably because,

M. BASTIAN

1 you know, she's in the principal's office, but he does that
2 with other people all the time.

3 Q. What other people are you referring to?

4 A. School aides. Well, they're gone now. Darius
5 Waters was one of them. Robert Sutton, he was another
6 school aide. They've moved on to different jobs.

7 Q. What was their race?

8 A. African-American.

9 Q. Are there any African-American teachers at

10 A. Philip Randolph?

11 A. Yes. Oh, Joyce Stannard. She's number one
12 with -- there was a constant back and forth with
13 investigations with him. He filed on her, she's filed on
14 him many times. Joyce Stannard.

15 Q. Any others?

16 A. Teachers?

17 Q. Any other African-American teachers other than
18 Ms. Stannard?

19 A. It was Mrs. Self, Mr. Giscombe -- Delroy
20 Giscombe. Those are the ones that I can think of right
21 now. Gloria Thompson -- Dr. Thompson.

22 Q. How is Mr. Garcia's relationship with these
23 people?

24 A. Terrible.

25 Q. What do you base that on?

M. BASTIAN

1 A. Race.

2 Q. No. What do you base your belief as to his
3 relationship with these people?

4 A. Oh, they've all had some level of complaint with
5 him.

6 Q. Is there any other reason why you believe that
7 Mr. Garcia's comment in regard to classical music was based
8 on race?

9 A. Is there another reason why I think it's based on
10 race?

11 Q. Why you believe it was discriminatory based on
12 race.

13 A. He was directing it at me with -- with malice.

14 Q. Any other reason?

15 A. To create a hostile environment.

16 Q. Any other reason?

17 A. No.

18 Q. What did you do after he made this comment to
19 you?

20 A. I reported him to Mr. Fanning. It's interesting
21 because the same day that he was getting or having
22 different staff members come in who were Hispanic, the
23 music was not blasting. He would turn it down. But when
24 no one was in the office, he would turn the music up just
25 for me.

M. BASTIAN

1 Q. When you went into his office, would he turn the
2 music down?

3 A. Oh, I wouldn't go into his -- I could hear it.

4 Q. Did you ever ask him to turn the music down?

5 A. A couple of times. Mr. Fanning had to come over
6 there a couple of times and have him turn it down as well.

7 Q. Did you ask Mr. Garcia directly to turn it down?

8 A. I would ask him to please turn it down. He had
9 an assistant, which was Oscar Guillaume, working with him,
10 so I would not go. It was in an office, in another office.
11 I would go and ask Mr. Guillaume to please go into Mr.
12 Garcia's office and turn that radio down because it's too
13 loud. But outside of it, just the classical music, it was
14 timed on a timer for certain -- at certain times, it would
15 start to buzz as if he were -- as if it was at home.

16 So I remember saying to him one day because I
17 would come in very early, he wouldn't come in until way
18 after 9:00, and the radio went off for like an hour with
19 that buzzing. And when he finally showed up, I said, "Why
20 don't you take that clock home or that radio because that's
21 something that you use at home, not in an office. It's
22 been going off for an hour." So he just laughed and
23 grinned at me and said, "Oh, I'm sorry."

24 Q. This is Mr. Garcia?

25 A. Yes.

M. BASTIAN

1 Q. You said you reported -- after the classical
2 music, you reported to Mr. Fanning?

3 A. I did.

4 Q. What was said during that conversation?

5 A. Mr. Fanning said, "Oh, he's still bothering you?"
6 And I said, "Yes, he's still at it." And he said, "Okay.
7 I'm going to call him in," and that was it.

8 Q. Did Mr. Garcia continue to play the music that
9 day?

10 A. No, that -- after that, it was turned down.

11 Q. After that incident completely or just that day?

12 A. No. For that day, he turned it down. He would
13 turn it -- he would turn it back on, you know, in other
14 day -- on other days, but it wouldn't be that -- it was
15 loud. It was too loud for an office, but it was not that
16 loud to the point where it was literally screeching in my
17 ear.

18 Q. Did you file an OEO complaint regarding this?

19 A. No, I did not.

20 MR. RENAGHAN: We'll go off the record.

21 (Whereupon, an off-the-record discussion was
22 held.)

23 Q. All right. Ms. Bastian, we're back on the
24 record.

25 A. Okay.

M. BASTIAN

1 in a bar, maybe in, you know, in his backyard when he make
2 these kinds of statements, but not here. He can't do that
3 here.

4 Q. You mentioned Mr. Garcia's radio playing
5 generally, not specifically in regard to classical music,
6 but just him playing the radio generally.

7 A. No, he would let it blast. He would set it
8 time -- set it on a timer, like, maybe every half an hour.
9 As if you were trying to -- you're using it as an alarm
10 clock, and he would time it for half an hour, and it would
11 just start blasting, like, well, huh? I have parents in my
12 office; I have students. They're like, "Ms. Bastian,
13 what's that?" I'm like, "That's over there. It's coming
14 out of there." "Who has a clock at work?" I'm like, "He
15 does. He has a clock at work." He has an alarm clock at
16 work, and you know, people really couldn't understand who
17 brings an alarm clock to work.

18 Q. Do you believe --

19 A. And even if you did, why would you set it to go
20 off?

21 Q. Do you believe that that was done to be
22 discriminatory based on race?

23 A. Yeah, anything to bother me. It was anything to
24 bother me to get me going. He would do something like
25 that, and then I would complain, and then so he'll -- he'll

M. BASTIAN

1 have another something to come after me for or go after any
2 African-American for, something new for him just -- as long
3 as my life stayed miserable, he was fine.

4 Q. Why do you think that him setting his radio was
5 based on your race?

6 A. To get a rise out of me, to disturb me, to bother
7 me.

8 Q. Do you believe it was specifically targeted
9 towards you?

10 A. Yes, because there were other people in that
11 suite, there were other people in the school. If he really
12 wanted to blast his radio, he could have taken it to
13 another department. He could have taken it to
14 Mr. Calcano's office. He could have -- there are other
15 people in that building where he could have taken that
16 radio, and if he wanted to really blast it and blast it in
17 their face or blast it next to where they were sitting and
18 trying to work. He did it to me, because he was trying to
19 get a rise out of me and create a hostile environment.
20 That's it.

21 Q. Where was the radio?

22 A. There was a door, and he had a file cabinet, he
23 would place it right there on top of the file cabinet, and
24 that -- behind that door is where I sat.

25 Q. What was on the other side of that door?

M. BASTIAN

1 A. His office. There was a door and two walls that
2 divided us.

3 Q. So the radio was in his office?

4 A. It was in his office. One time that I -- I had
5 to call Mr. Fanning over with another assistant principal,
6 Ms. Garcia, to hear it, and she was like, "What is going
7 on?" I'm like, "This has been going on for a long time,
8 and I'm really tired of it." So she said, "Oh, no, call
9 Mr. Fanning." I called Mr. Fanning. Mr. Fanning, with his
10 key, opened up the door, and I don't know what happened to
11 the radio after that. All I know, the radio was not
12 playing any more.

13 The very next day, Mr. Garcia came in -- because
14 he had gone out for PD, but I was in the building, and he
15 said, "Do you know what happened to my radio?" And I said,
16 "No, I don't know." He said, "Did you see anybody come in
17 my office?" I said, "I didn't see anybody go in your
18 office. I don't know what happened," but apparently
19 something happened to that radio.

20 Q. Mr. Fanning did something?

21 A. I guess so. All I know, I didn't hear it any
22 more.

23 Q. Other than what you mentioned, is there any other
24 reason why you think that him playing his radio was based
25 on your race?

M. BASTIAN

1 A. Outside of creating the hostile environment and
2 the race, no. I couldn't understand why he -- he couldn't
3 have taken his radio somewhere else. A. Philip Randall is
4 six -- six flights in that floors, in that school. There's
5 a number of places he could have taken that radio if he
6 really wanted to blast it, but he continued to do it there
7 next to me.

8 Mr. Guillaume, his assistant, he never disturbed
9 him. He would buy him lunch. They would go and lock the
10 door, and they would eat and have -- the radio would be on,
11 but the radio would be low.

12 Q. Was Mr. Guillaume ever there when this radio went
13 off?

14 A. Oh, yes. Yes. A couple of times I had to ask
15 him to go in there and turn it off.

16 Q. Was Mr. Guillaume ever there when the radio was
17 blasting?

18 A. Yes, he was.

19 Q. Where does Mr. Guillaume sit?

20 A. At the time when -- he's moved since then. He's
21 --

22 Q. At the time.

23 A. There was -- inside, geographically, he -- okay,
24 let me see what I'm trying...

25 There was an adjacent office next to Mr. Garcia,

M. BASTIAN

1 so he would've sat in the outside -- the outer office.

2 Q. The outer office of what?

3 A. The outer office of Mr. Garcia's office. That
4 office was enclosed. When you walk in, just try to draw
5 a -- when you walk in, you would see a huge office with
6 three large panes, which was my office, but to the back of
7 that office is where Mr. Garcia sat, and there was another
8 office adjacent to it where Mr. Guillaume sat.

9 Q. So he was on the opposite side of Mr. Garcia's
10 from you?

11 A. Yes, he was.

12 Q. So Mr. Guillaume would hear the radio whenever it
13 was blasting?

14 A. He can hear it. There's no way he could have --
15 he could not have heard it.

16 Q. And what was his race?

17 A. Hispanic. Dominican. And he was performing a
18 duty that he had no license to do. School secretary
19 licensed person was supposed to be in charge of what he was
20 doing.

21 Q. How did that affect you?

22 A. What? The fact that he was doing --

23 Q. Or did it affect you at all?

24 A. Yes, it did. But I did not like it.

25 Q. But did it affect your job at all? Did it affect

M. BASTIAN

1 your responsibilities?

2 A. No, it did not affect my responsibilities. It
3 affected me because I know that I'm credentialed and I know
4 that I had to go through all the processes of retaining my
5 credentials, and someone else is now in a position to do
6 responsibilities of a credentialed person, and he does not
7 have this license.

8 Q. Did you go to OEO about the radio going off in
9 Mr. Garcia's office?

10 A. No.

11 Q. And you mentioned something about you can't go to
12 OEO every --

13 A. When I went to --

14 Q. -- all the time?

15 A. Mm-hmm. I went to Mr. Fanning because I'm like,
16 okay. Now, remember, I'm listening to all the other people
17 in the school and all their reports, OSI and OEO and all
18 that stuff.

19 We have a number -- we have a number of teachers
20 there who were under investigation, so I'm in charge of all
21 subpoenas coming from the Department of Education, law
22 department. I'm on the phone, speaking about these
23 subpoenas and following up with attorneys. So at that
24 point, the school is like a -- just a big court. I'm
25 feeling like I'm working in a courthouse now, and not a

M. BASTIAN

1 school.

2 Between what's happening to me and what's
3 happening to other people, because all the people that I'm
4 surrounded with, they're all having -- they're all under
5 investigation now. Every African-American that's
6 associated with me at A. Philip Randolph, they're all under
7 investigation.

8 Q. Other than the one OEO complaint that we talked
9 about before, that guidance complaint, did you file any
10 others?

11 A. I did not.

12 Q. Okay. And then other than -- and I believe you
13 said something about Fanning telling you about things that
14 Garcia had done; is that correct? Is that accurate?

15 A. He -- yes, he may have mentioned. He said,
16 "Yeah, I really do need to go speak to him," because he
17 talked about -- not in detail. He said, "But he's -- he's
18 made some statements where I had to go and straighten him
19 out regarding the same kinds of things."

20 Q. Did he say what that was in regard to?

21 A. No, he -- no, he never mentioned names and he
22 never mentioned the situation, but he said, "I really had
23 to speak to him." Because when I went to him, he was
24 upset. He was like, "I just spoke to him about having made
25 these comments to somebody else." And I'm like, "Yeah,

M. BASTIAN

1 could -- yeah, 2011.

2 Q. Okay. And what happened after Mr. Fanning came
3 and heard this radio playing?

4 A. He came in, he took his key and went in that
5 office, and then after that, I didn't hear the radio any
6 more.

7 Q. Did you ever hear the radio after that?

8 A. Very low.

9 Q. Okay.

10 A. Very, very low. It was no more blasting of it
11 after that.

12 Q. You mentioned a comment regarding grits?

13 A. Oh, yeah, the grits.

14 Q. Can you tell me about this?

15 A. Sure. I went into -- I was -- okay. Mr. Garcia
16 is a assistant principal of security. So any time I would
17 receive a subpoena, there are different departments I would
18 have to contact to get information. These particular
19 children -- they were something that happened regarding
20 disciplinary, so he needed to run an ORS report.

21 The ORS report is the online reporting system for
22 suspensions, infractions, and all that. He's the only one
23 who is able to do that. I needed to get that from him
24 because I had a courier coming to pick up the information
25 that needed to be delivered to -- now, this is December

M. BASTIAN

1 7th. This is like the day Mr. Fanning started. I remember
2 this one really good.

3 He needed to -- he was supposed to give it to me
4 the day before but of course, you know, he was doing other
5 things instead of that. So I had to report to him, and I
6 remember I didn't want to go there 'cause I never liked to
7 be in the office with him by myself. I didn't know who was
8 going to be in that office with him. So I had went to Mr.
9 Menegatos first, and I said, "You know, the courier is
10 coming for this subpoena. We need to have this done now.
11 I need for you to walk with me to Mr. Garcia's office right
12 this minute." Because he knew I did not go in there by
13 myself.

14 So he said, "Okay. Come on. Let me go with
15 you." He walked down with me. We went in his office, but
16 Ms. Manrique was there. They were eating. There's a food
17 from the Caribbean, also Hispanic-Caribbean too, that --
18 and my family eat it as well because my family comes from
19 the Caribbean. So when I opened the door, I saw it, and I
20 said, "Oh, you're having breakfast?"

21 It's -- it's a food called mangu, bananas and
22 sausage, and that's what people eat. So he said, "Do you
23 want some?" And I said, "No. I just want to get the
24 information that I need to get from you, because the
25 courier is on his way, and I need to get this stuff over

M. BASTIAN

1 because -- "

2 Q. I'm sorry, who said, "Do you want some?"

3 A. He -- Garcia.

4 Q. To you?

5 A. Yeah.

6 Q. Okay.

7 A. Do you want some -- some mangu. I said, "No.
8 Just give me the envelope," which I should have had the day
9 before. Okay. So, he -- I said, "No, I don't. I do not
10 want any, thank you. Just give me the information."

11 Now, one of the community assistants,
12 Ms. Manrique, is sitting there because there was a full
13 spread of food out because there was a lot of food going on
14 in that school.

15 So a teacher walks in with me, Ms. Conquest.
16 She's an African-American teacher. She walks in with me,
17 along with Menegatos. We're walking in together. When he
18 offered me the mangu, I said, "Oh, no. No, thank you.
19 Please just give me the package so I can give it to the
20 courier because they're coming." They don't wait long.
21 They need to get it and go. So he said, "Okay." But he
22 does not -- he doesn't go look for it. He said, "You know
23 what, since you don't want the mangu, I'm going to go buy
24 you some grits."

25 So I'm just now standing there, and Mr. Menegatos

M. BASTIAN

1 is standing there with that look on his face, like oh, "S",
2 here we go. Because he -- he sees it. Now, he's like oh,
3 oh, it's coming. And Ms. Conquest is just sitting --
4 standing there in total silence. So I said, "Grits?" I
5 said, "I don't eat grits, Mr. Garcia." He said, "You sure?
6 I'm going to buy you some grits."

7 I'm just now just standing there. I really don't
8 like even know what to do with this anymore. This is like
9 outrageous. In my mind I'm thinking, "When is this ever
10 going to stop? Like, when is he really going to stop
11 this?" So when all -- everything is said and done, he
12 finally say, "Oh, go to your office. I'm going to send you
13 the stuff by e-mail," and I got it by e-mail. But after I
14 got it, I stormed into Mr. Menegatos' office and I reported
15 what happened.

16 Again, he sent me the link, Chancellor's
17 regulations, A-30. The link again came. And I did go
18 online, and I did report the whole thing, and I did get a
19 call from Downtown. I also told Mr. Fanning about it. And
20 he said okay. Okay. That was it. Just okay.

21 Q. Sorry, who said that?

22 A. Oh, the principal.

23 Q. Mr. Fanning?

24 A. Mm-hmm.

25 Q. So let me make sure I just have the people -- the

M. BASTIAN

1 cast correct. So Ms. Manrique, Mr. Menegatos, and Ms.
2 Conquest were all in the office when this happened?

3 A. Yeah, Manrique. M-A-R -- wait, wait.
4 M-A-N-R-I-Q-U-E.

5 Q. Okay. Excuse me.

6 And then afterwards, you went and spoke to
7 Mr. Menegatos?

8 A. Went to speak to --

9 Q. Well, he was already there, so you -- you went to
10 his office?

11 A. Yeah. He was there because, remember, he walked
12 me down.

13 Q. Right.

14 A. Because I refused to go into Mr. Garcia's office
15 by myself.

16 Q. Right.

17 A. For about two years I would not go in there
18 alone. Because I would not go in his office 'cause I
19 didn't want to hear any comments. I was really -- I was
20 really sick of it by that time. It was making my stomach
21 turn to have to hear this all the time. This ridicule,
22 other people laughing, 'cause that's what he was doing,
23 wanting other people to laugh about it, and it was
24 really -- I couldn't take it anymore. So I needed now
25 proof.

M. BASTIAN

1 And I also said in that complaint, "Do you
2 realize that there are three people listening to you?" In
3 my complaint I write that because I'm letting him know you
4 have witnesses now, people are listening to you make these
5 statements. This is not me just any more running to Mr.
6 Fanning, and Mr. Fanning running to you, ha, ha. That's
7 not happening no more. What's happening now is, I am now
8 logging and letting you know that there are people who are
9 going to be testifying against you because you are now out
10 of control.

11 Q. Okay. So Mr. Menegatos, you spoke to
12 Mr. Menegatos about this. What did he say?

13 A. When I went to his office, he said, "Calm down."
14 He said, "I'm going to send you the link." He came to my
15 office twice that day to make sure that I was going to
16 write this up.

17 Q. And this is the link to the internal -- the DOE
18 internal OEO complaint system; is that correct?

19 A. Yeah.

20 Q. And you said that you filed the complaint using
21 that link?

22 A. Yes.

23 Q. And what did you state in that complaint?

24 A. What happened. Everything. He said he was going
25 to buy me grits, everything.

M. BASTIAN

1 THE WITNESS: Right?

2 MR. SULLIVAN: Off the record.

3 (Whereupon, an off-the-record discussion was
4 held.)

5 Q. Ms. Bastian, we're back on the record.

6 A. Okay. Thank you.

7 Q. All right. You also mentioned before an instance
8 where Mr. Garcia wore an afro wig?

9 A. Yeah.

10 Q. Is that correct?

11 A. Mm-hmm.

12 Q. Do you remember when that was?

13 A. That was sometime during -- it had to be sometime
14 there in the summer, towards the end of the school.

15 Q. Of what year?

16 A. It would -- would have to be 2010 or -- either
17 2010 or 2011.

18 Q. Can you tell me about what happened?

19 A. I was at a meeting with the principal and other
20 people, and he showed up dressed up in a afro wig with a
21 pick in it. Not a pick -- a pick.

22 Q. Okay. What happened next?

23 A. Oh, he looked at me; I looked at him. I was,
24 like, "What the -- what is that?" And he put his fist up
25 and said fight the -- "More power to people," something

M. BASTIAN

1 like that. One of those statements he made with a fist up.
2 And I just said, "Oh, boy. What's this?"

3 Q. Anything else happened after that?

4 A. I remember Mr. Fanning saying -- he said, "Oh,
5 boy." I remember him looking at me and saying, "Oh, boy."
6 I'm, like, reading his facial expression because now he
7 knows something's going to happen, and I'm saying uh-uh,
8 uh-uh, and that's it. I can't -- I can't remember anything
9 else from that incident.

10 Q. Do you believe this action by Mr. Garcia was
11 discriminatory?

12 A. Yes. Yeah.

13 Q. Is that on the basis of race?

14 A. Yes.

15 Q. Anything other than race?

16 A. Again, ridicule and creating hostility again.

17 Q. Anything else?

18 A. No.

19 Q. What about age?

20 A. No.

21 Q. Okay. What led you to the conclusion that this
22 was based on race?

23 A. What led me to that because that was a day that
24 the school have these designated days for kids towards the
25 end of the school year. And that was -- those days are for

M. BASTIAN

1 the kids to dress up in different themes; it's not for
2 adults.

3 As long as I've been at A. Philip Randolph, I
4 can't remember -- 1995, so 2014, it's going to be 20 years
5 for me coming up. I have never, ever seen an adult dress
6 up on those days. Those days are sponsored for the kids
7 because those are like their end-term, you know, activities
8 for them to leave.

9 Okay. If you -- even if you -- you're an adult
10 and you want to dress up, but why would you wear that? Why
11 would you wear -- he was wearing a dashiki too, by the way.
12 Why would you wear an afro wig and put a pick in it and
13 raise your hand up like this (indicating), "More power to
14 the people. Power sister." One of those ridiculous
15 statements he made. Why would you do that? You are the
16 only adult dressed up. Okay. If you wanted to dress up,
17 but why would you choose those clothing? He could have
18 been anything. He could have dressed up like a Leprechaun,
19 but if he had done that, he would have insulted my
20 principal.

21 Q. Other than --

22 A. He knew not to do that.

23 Q. I take it what you're referring to is stereotype?

24 A. Yes.

25 Q. Other than that, any other reason why you believe

M. BASTIAN

1 it was based on race?

2 A. He likes to dress up because he likes to mimic
3 and mock black people. It makes him -- he feels great
4 about it. He feels good about doing stuff like that.

5 Okay. If I -- I could have come in with an afro wig if I
6 wanted to. I didn't do that, but he did it. Why?

7 Because, again, he -- he goes again with his mockery and
8 his insulting behaviors, and knowing that he's going to
9 continuously get away with this. That's why he keeps doing
10 it.

11 Q. Okay. Anything else?

12 A. No.

13 Q. Sorry. Just to jump back. I realized I skipped
14 a question in regard to grits.

15 Did you ever talk to Mr. Garcia about eating
16 grits?

17 A. I've never had grits in my life.

18 Q. So that's a no?

19 A. We don't -- no. I've never had grits. I don't
20 know how they taste.

21 MR. BELDNER: His question was whether you
22 ever talked to Mr. Garcia about grits.

23 THE WITNESS: No, I've never spoken to him
24 about grits.

25 Q. Has anybody else at A. Philip Randolph spoken to

M. BASTIAN

1 you about grits before?

2 A. In side conversation, what do -- I'm not
3 understanding.

4 Q. Just during any conversation at A. Philip
5 Randolph, has the topic of grits come up?

6 A. No. No, I've -- I've never had -- I've had --
7 I've had a conversation about grits when this -- when that
8 happened.

9 Q. But before that?

10 A. No.

11 Q. Okay. Going back now.

12 With the afro wig and the pick, that incident,
13 who else was in that room when Mr. Garcia came in?

14 A. Mr. Fanning was there. Nicole McShall. Was this
15 Dr. Lowenthal? Sonia Burke.

16 Q. Anyone else?

17 A. There was another person, but I do not remember.

18 Q. What's Ms. McShall's race?

19 A. African-American.

20 Q. And what do you base that on?

21 A. Race.

22 Q. Dr. Lowenthal's race?

23 A. Can I say Jewish? Can I use that? Is that a
24 race? Can I say that's his race?

25 Q. Is that what he identifies himself as?

M. BASTIAN

1 A. He is Jewish, yes.

2 Q. What about Ms. Burke?

3 A. African-American.

4 Q. Did you file a OEO complaint after Mr. Garcia
5 came in with the wig?

6 A. No.

7 Q. Did you mention that in any OEO complaint?

8 A. No. Told the principal. He was there. So he
9 saw it.

10 Q. Did you ask Mr. Fanning to do anything about it?

11 A. No.

12 Q. Did anyone say anything to Mr. Garcia?

13 A. About?

14 Q. About the wig and the pick.

15 A. In what capacity?

16 Q. The people that were there, did anybody say
17 anything to him about what he was wearing?

18 A. Oh, like -- oh, do you like -- you look nice,
19 something like that, or you're funny?

20 Q. Anything at all?

21 A. No. No one said anything.

22 Q. Did anybody talk with you about that incident?

23 A. I spoke with Ms. Burke about it when -- and how
24 ridiculous he looked, and I spoke to Mr. Fanning about it.

25 Q. When did you speak to Mr. Fanning about it?

M. BASTIAN

1 A. The same day.

2 Q. What did he say?

3 A. Nothing.

4 Q. What did you say to Mr. Fanning?

5 A. "Why is he wearing that wig? Why would he come
6 into school wearing an afro wig with a pick in it on the
7 day where the kids are dressed up?" I said, "There's no
8 other administrator. You have one, two, three -- you have
9 six administrators in here. None of them are dressed up.
10 He's the only one dressed up." I could see if it was for
11 students and staffs, or maybe if it was another
12 administrator dressed up. I said, "You're not even dressed
13 up." Nobody is dressed up but him wearing that afro wig
14 again.

15 Q. Did you ask Mr. Fanning to say anything to him?

16 A. No.

17 Q. All right. You mentioned an incident where
18 Mr. Garcia said something about African-American women in
19 the projects.

20 A. That was just -- when I was assigned to him, part
21 of that responsibility that I had, when I was assigned to
22 work with the different principals, he would -- he asked me
23 that several times. Why does black girls wear -- put
24 Vaseline on their face and tie their hair, their heads,
25 with head scarves when they're about to fight?

M. BASTIAN

1 Q. When was this?

2 A. Like 2008, 2009. That's when I was assigned to
3 him. What I would do, I would go to their office,
4 whatever -- whoever the assistant principal was, and for
5 the time I was assigned to them, I would just report to
6 their office. And his office was usually filled up with
7 food, not for me, for all his friends. It would be --
8 yeah, it would be ongoing Spanish for the whole time I was
9 there, which was usually for hours, and socializing.

10 Q. So was this during the 2008/2009 school year?

11 A. It was during the time that I was assigned to the
12 assistant principals, and I know it encompassed that time.
13 It might be more, but I don't know for sure.

14 Q. By more, you mean after?

15 A. More meaning 2010. It could have went into that
16 as well, but I don't remember.

17 Q. All right. Was this comment made more than once?

18 A. Yes.

19 Q. Who else was there when this has been said?

20 A. These comments were usually made when his --
21 other Hispanics were there, but that was never a problem to
22 them. They didn't see that as being insulting. They just
23 thought --

24 Q. Do you remember their names?

25 A. Yeah. Ms. Manrique -- Tatiana Manrique. This

M. BASTIAN

1 woman is now retired, Ms. Hernandez. She retired about
2 three years ago.

3 Q. Anyone else?

4 A. Yes, there were. I don't know their names. We
5 had sub teachers, substitute teachers that would come. A
6 lot of time -- they were always Hispanic and they would
7 spend a lot of time in his office. I never really
8 understood when they taught because they spent a lot of
9 time sitting down in his office. And that's when the -- it
10 was a lot of socializing and food eating in his office. Or
11 another young woman named Wendy. She's still at the
12 school. She's a school aide, Wendy McAdoo. She often hung
13 out with Mr. Garcia.

14 Q. What's her race?

15 A. Dominican.

16 Q. And the other substitutes --

17 A. Ms. Hernandez.

18 Q. Yes, Ms. Hernandez.

19 A. Ms. Hernandez is Dominican. She's now retired.
20 She's been retired for three years. The other ones, I
21 don't know them. They were substitute teachers, so they
22 would come and they -- their English was -- you could not
23 understand them at all. I mean, you really couldn't. So
24 there were subs. I never, you know, I knew who they were,
25 but I never engaged them in conversation because I knew

M. BASTIAN

1 that they could not speak English.

2 Q. And they were present when --

3 A. Oh, yeah.

4 Q. -- when Mr. Garcia asked this?

5 A. Yeah. Yeah, they were there.

6 Q. So what else was said other than this question,
7 or what was your response to this question?

8 A. Read it again?

9 Q. What was your response to this question?

10 MR. BELDNER: The question that Mr. Garcia
11 made?

12 MR. RENAGHAN: The question that Mr. Garcia
13 posed about African-American women in the
14 projects.

15 A. Oh, I told him I own my apartment because I
16 remember going to Mr. Fanning about that. I said, "I don't
17 know anything about that. Every apartment I ever lived in,
18 I owned, so I don't know anything about that." And, yes, I
19 did report it to the principal.

20 Q. Who was the principal at that time?

21 A. Mr. Fanning.

22 Q. I'm sorry, when did this take place?

23 A. It was over time. You know, I was assigned to --
24 when -- being assigned to an assistant principal means you
25 go to the office and you do whatever they want you to do.

M. BASTIAN

1 That's why I complained because a lot of my stuff was
2 menial. I was like making copies and photocopying books,
3 and I'm like, "What's going on," when community assistants,
4 I thought, should have been doing that, not a licensed
5 secretary.

6 Q. But the principal that you reported this to was
7 Mr. Fanning?

8 A. Yes.

9 Q. And what did Mr. Fanning say?

10 A. Nothing.

11 Q. Nothing at all?

12 A. He shook his head.

13 Q. Did you ask him to do anything about it?

14 A. No. No.

15 Q. Did you file a complaint about this?

16 A. No.

17 Q. Did you include it in your OEO complaint?

18 A. No.

19 Q. You said that he had asked you this multiple
20 times. What was your response the second time he asked
21 you?

22 A. I'm sorry, say that again, please.

23 Q. You said that he had asked you this question
24 about African-American women in the projects multiple
25 times. What was your response the second time?

M. BASTIAN

1 A. I told him I don't know anything about that.

2 Q. Did you ever ask him --

3 A. I said, "Why are you --"

4 Q. -- to stop asking you?

5 A. Yeah, I did. I said, "What do you -- why are you
6 asking me these things? You need to go find somebody that
7 live in housing, in public housing, and ask them that.
8 Stop asking me." But it would always be passed off as a
9 joke, and then, you know, he'll leave it alone. And then
10 some other time he'll come back and ask me again. I'd say,
11 "I don't know anything about that."

12 Q. Was he asking you specifically or was he asking
13 the group?

14 A. I was the only one there. He was --

15 Q. I thought you said that there were --

16 A. There were other people there, but he's -- no,
17 he's asking me.

18 Q. Okay.

19 A. He's looking at me and asking me.

20 Q. Do you believe that this question was
21 discriminatory?

22 A. Yes.

23 Q. Was that based on race?

24 A. Yes.

25 Q. Was it based on anything other than race?

M. BASTIAN

1 A. Race and to create ridicule, to -- he loved an
2 audience. It was fun for him to -- if he can humiliate any
3 person of African-American descent and get a rise out of
4 his group, he loved that.

5 Q. Anything else?

6 A. No.

7 Q. Did you talk to anyone else about this?

8 A. Probably Sonia Burke.

9 Q. Do you recall?

10 A. I'm sorry?

11 Q. Do you recall actually having a conversation
12 about it?

13 A. Yeah. Yes, I recall.

14 Q. What was said?

15 A. Mr. Garcia said he's up to his tricks again.
16 He's still with his comments and making jokes and trying to
17 embarrass me.

18 Q. All right. You referred to an incident with a
19 Malcolm X poster; is that correct?

20 A. Yes.

21 Q. And when was that?

22 A. I don't remember the date. I can't. It happened
23 around the time of the Tray/OFT Martin shooting. He hung
24 up this huge poster of Malcolm X. It's -- I -- it's hard
25 for me to say, I can't say anything.

M. BASTIAN

1 I had three huge windows, glass panes, and
2 Mr. Fanning did not want anything covered. We were not
3 allowed to cover anything. So my office was like a fish --
4 a fish bowl because he said covering up windows implied
5 something was going on. So really, I mean, I could kind of
6 look out and see everything that was happening in the whole
7 suite.

8 So I'm seeing this poster he put up. I'm like,
9 "What is that? What is he doing now?" I'm sorry. It was
10 always one thing after another. So I'm seeing it being
11 tacked up, and I'm seeing this Malcolm X poster, and I'm
12 like, oh, boy. This is not the time to do that.

13 So I called people down. I was calling people
14 down to my office, and I said, "Look at that." And they
15 were like, "Wow, who put that up there?" And I'm like, "He
16 did it." And they're saying, "He put that up there? Mr.
17 Fanning let him put that up there?" I'm like, "He put that
18 up there." Because I want people to know that was not me.
19 I didn't put that up. And he came -- after he put it up
20 and everything, and I'm watching him do it, he goes back to
21 his office and comes back and say, "Oh, do you like my
22 poster?"

23 Q. What did you respond?

24 A. "Why would you --" I said, "Why did you put that
25 up there? Why would you put that picture up there? No, I

M. BASTIAN

1 was a good idea at all.

2 Q. Why didn't you think it was a good idea?

3 A. Because of the Trayvon Martin situation and
4 there -- people were -- were upset. The kids were running
5 around with hoodies on. Malcolm -- there are two Malcolm
6 Xs, not everybody know of a transformation Malcolm X.
7 There are people who know -- want to know the Malcolm X
8 prior to his incarceration. I studied Malcolm X. That
9 Malcolm X is the Malcolm X that we would -- we would term
10 the racist Malcolm X. But then after he went to prison and
11 he came out, he became a different Malcolm X, the Malcolm
12 X that was not espousing by any means necessary, and all
13 that other kind of stuff.

14 So which -- depending on who you are, if you're a
15 person 18 and under, you don't know that other Malcolm X.
16 I'm not 18 and under. I may look it. So they don't know
17 that, and then on top of what just happened. You're
18 talking about young people. You're talking about black
19 men. Let me be that specific. With Tray/W Martin just
20 being killed, and now you have Malcolm X poster up. Is
21 that responsible?

22 Q. Which Malcolm X or -- was the poster depicting?

23 A. There's only one Malcolm X poster.

24 Q. Sorry, you--

25 A. There's -- you will never see a Malcolm X with an

M. BASTIAN

1 afro. Is that what you mean, like a before and after
2 Malcolm X?

3 Q. Right. So you were describing a before prison
4 and after prison, what --

5 A. No, his -- his thought patterns.

6 Q. Did you recognize the picture from before prison
7 or --

8 A. It's one -- it's only one. It's not going to be
9 ever -- you wouldn't ever see a different -- you're never
10 going to see, like I say, a Malcolm X with a big afro with
11 a dashiki. Is that what you mean? And now a Malcolm X
12 with a suit and a tie?

13 MR. BELDNER: We got it.

14 THE WITNESS: I'm sorry.

15 Q. Is there anything about the picture which would
16 indicate to you which phase of his life that this picture
17 was --

18 A. It says, "By any means necessary."

19 Q. Okay.

20 A. Yeah.

21 Q. So I take that to mean earlier phase of his life?

22 A. Yes. But if you're 18 and under, you're not
23 going to know -- no, you have to be an older person to have
24 studied him. The kids don't know that Malcolm X. They
25 know the earlier Malcolm X before he was incarcerated

M. BASTIAN

1 because that's what really -- that was the revelation.

2 If you read it -- if you read him, you'll see
3 what happened to him. And then he started to espouse
4 something differently, but they don't know that one. So I
5 didn't think it was appropriate to have that up there,
6 especially at this time.

7 Now, reversed, had I put that up there, he would
8 have contacted OEO on me. He would have -- yes, he would
9 have done that because he would have turned it around and
10 he would have said that I was espousing and I was creating
11 a riot. That's what he would've done to me.

12 Q. Do you believe that this action was
13 discriminatory?

14 A. Yes.

15 Q. Do you believe that it was based on race?

16 A. Yes.

17 Q. Anything other than race?

18 A. Again, to start his -- to create his hostile
19 environment.

20 Q. Anything else?

21 A. And I did say something to him, by the way. I
22 said, "Why don't you put up a picture of Dr. King? If you
23 want to put somebody up, put him up." Walked away.

24 Q. Did he respond?

25 A. He walked away. Yeah, he responded. He walked

M. BASTIAN

1 away. That's what he did.

2 Q. The action being, putting up the poster, correct?

3 MR. BELDNER: You should probably ask the
4 question.

5 MR. RENAGHAN: Sorry.

6 Q. You said you believe this is discriminatory based
7 on race. The action being, putting up the poster, that's
8 what you believe is discriminatory based on race; correct?

9 A. Him telling me to fight the power.

10 Q. Him saying, "Fight the power." Anything else?

11 A. I'm sorry. This is bringing back memories of
12 this. Outside of race and he creating this environment,
13 no.

14 Q. Other than making that comment to Mr. Garcia
15 about putting up a poster of Martin Luther King, did you do
16 anything else after this?

17 A. Did I do anything? I told Mr. Fanning about it.

18 Q. What did you say to Mr. Fanning?

19 A. I said you -- I called him. I said, "You need to
20 come over here and see this." He came over. He looked at
21 it, and he walked out. I don't know what happened because
22 the poster was taken down. I don't know who took it down.

23 Q. When was it taken down?

24 A. Like a week later. I don't know what happened.
25 Because Mr. Garcia accused me --

M. BASTIAN

1 Q. When did you speak to Mr. Fanning?

2 A. The same day. He accused me. I didn't take that
3 poster down.

4 Q. Did you ask Mr. Fanning to do anything else?

5 A. No. I don't remember telling him -- asking him.

6 Q. Did you file an OEO complaint regarding this?

7 A. Not about the Malcolm X thing.

8 Q. Did you mention this in any of your OEO
9 complaints?

10 A. No.

11 Q. Why not?

12 A. I don't know. I just didn't.

13 MR. RENAGHAN: All right. Can we go off the
14 record briefly?

15 (Whereupon, an off-the-record discussion was
16 held.)

17 Q. All right. We've discussed a number of
18 allegations of actions that you believe were discriminatory
19 and statements and actions that you believe created a
20 hostile work environment today. Are there any other
21 actions that we haven't discussed?

22 A. Well, does treating -- being treated very
23 unfairly, does that go into hostile work environment?
24 Being placed in the -- in the conditions that I was --

25 Q. Just what specifically are you referring to?

M. BASTIAN

1 A. The treatment. The maltreatment. Being placed
2 in a room with no air, being moved around to different
3 administrators with my qualifications, having people hired
4 in front of me who did not have my level of experience.

5 Q. Okay. But I believe we --

6 A. I don't know. I'm asking --

7 Q. Did we not discuss those earlier?

8 A. I was asking, is that being covered under --
9 because you asked me is there anything else. I didn't
10 know.

11 Q. Anything other than what we've discussed today.

12 A. Oh, no.

13 Q. So I just want to make sure that there isn't
14 another event that we didn't discuss today, so --

15 A. Okay. I just wanted to be clear.

16 MR. BELDNER: She didn't know whether that
17 stuff would be considered under the hostile work
18 environment, which is what --

19 MR. RENAGHAN: Okay.

20 THE WITNESS: Yes. I'm sorry. I didn't say
21 it properly.

22 MR. SULLIVAN: I think that's what she's
23 testifying.

24 Q. Yeah. So maybe we'll break this out to be a
25 little bit more clear. So we discussed another -- a number

M. BASTIAN

1 of actions this morning that I believe your claims of
2 employment discrimination are based upon.

3 Are there any other actions that we didn't get to
4 that we didn't discuss that you're claiming?

5 A. No.

6 Q. And then I think it was mostly this afternoon we
7 discussed a number of statements and actions that I believe
8 you're claiming were discriminatory in creating a hostile
9 work environment?

10 A. Yes.

11 Q. Are there any statements or actions that we
12 didn't discuss that you believe contributed to that?

13 A. No. I believe we covered it.

14 Q. Now, this morning you also mentioned that you
15 believe that age was also a basis --

16 A. I do.

17 Q. -- a reason for your discrimination?

18 A. I did say that earlier this morning.

19 Q. I don't believe that any of the actions we
20 covered, when asked, you said were based on age; is that
21 correct?

22 A. That is correct.

23 Q. Are there any actions that you believe that were
24 based on age?

25 A. No, sir. I would like to remove that from the

M. BASTIAN

1 record.

2 Q. Okay. So you don't believe that you were
3 discriminated against based on age?

4 A. No, sir.

5 MR. RENAGHAN: All right. I think at this
6 time we'll break for the day.

7 (Whereupon, at 5:18 P.M., the examination of
8 this witness was concluded.)

9

10

11

MELISSA BASTIAN

12

13 Subscribed and sworn to before me

14 this ____ day of _____ 20__.

15

16

NOTARY PUBLIC

17

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22

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24

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M. BASTIAN

C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.:
COUNTY OF KINGS)

I, STACY TEPLER, (1-80, 178), a Notary Public
for and within the State of New York, do hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and that such
examination is a true record of the testimony given by that
witness.

I further certify that I am not related to any
of the parties to this action by blood or by marriage and
that I am in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto set my hand
this 18th day of August 2014.



STACY TEPLER

M. BASTIAN

C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.:
COUNTY OF KINGS)

I, ANNA VORTSMAN, (81-177, 179), a Notary
Public for and within the State of New York, do hereby
certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and that such
examination is a true record of the testimony given by that
witness.

I further certify that I am not related to any
of the parties to this action by blood or by marriage and
that I am in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto set my hand
this 18th day of August 2014.



ANNA VORTSMAN